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"Royal Commission on, 1937

ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

REPORT OF HEARINGS

2 New Brunswick 7

Vol. 2, Pt. 1-3

MAY 20 1938 — May 23, 1938

REPORTERS:

George Thompson  
John Robertson  
David Torry

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FREDERICTON, NEW BRUNSWICK, MAY 20, 1938

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# ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

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FREDERICTON, NEW BRUNSWICK, MAY 20, 1938

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The Royal Commission appointed to re-examine the economic and financial basis of Confederation and the distribution of legislative powers in the light of the economic and social developments of the last seventy years, met at the Parliament Buildings, Fredericton, New Brunswick, on Friday, May 20, 1938, at 10.30 a.m.

## PRESENT:

COMMISSIONER JOSEPH SIROIS....THE ACTING CHAIRMAN

JOHN W. DAFOE, Esq.	)	
DR. ROBERT ALEXANDER MacKAY	)	Commissioners
PROFESSOR HENRY FORBES ANGUS	)	

## Commission Counsel:

James McGregor Stewart, K. C.

## Secretariat:

Alex. Skelton, Esq.	Secretary
Adjutor Savard, Esq.	Secrétaire Français
R. M. Fowler, Esq.	Legal Secretary to The Chairman
Wilfrid Eggleston, Esq.	Assistant to the Secretary

## FOR THE GOVERNMENT OF NEW BRUNSWICK:

Hon. A. Allison Dysart, K. C.	Premier, Minister of Public Works
Hon. J. B. McNairn, K. C.	Attorney-General
Hon. A. P. Paterson	President Executive Council, Minister of Education and of Federal and Municipal Relations
Hon. A. C. Taylor	Minister of Agriculture
Hon. F. W. Pirie	Minister of Lands and Mines
Hon. W. S. Anderson	Chairman of the N. B. Electric Commission
Hon. W. P. Jones, K. C.	Counsel
Hon. C. T. Richard	Provincial Secretary- Treasurer
Hon. J. H. Conlon	Director of Federal and and Municipal Relations
J. K. King, Esq.	Deputy Minister of Agri- culture
E. B. McJatchy, Esq.	Superintendent of Insurance



FOR THE TRANSPORTATION COMMISSION  
OF THE MARITIME BOARD OF TRADE:

Mr. F. MacLure Sclanders,  
Mr. R. H. Matheson

Secretary-Treasurer  
Transportation Manager





Parliament Buildings,  
Fredericton, New Brunswick,  
May 20th., 1938.

MORNING SESSION

The Commission met at 10.30 A.M.

MR. STEWART: Mr. Jones, pertinent to the matter we were discussing at the adjournment last night, on the question of regional tariffs, is it your conception of the proposal that each province should have the right to establish its own tariff or that groups of provinces, perhaps, at certain points that are economically important should have the right?

HON. MR. JONES: Well, Mr. Stewart, I did amplify that proposition to some extent yesterday, and I did also state that I was not prepared then to say just what was meant by a regional tariff, -- what was generally understood by a regional tariff. I think what is understood is that a regional tariff is a tariff made applicable to commodities that might be imported into a country for use in some particular section of the country, being used in that section. That is one view one might take of a regional tariff. On the other hand, I did suggest that it might be made to apply -- although I see the difficulty of working it out in the way I spoke of -- to that particular province as protection for some of its manufactured products.

MR. STEWART: For instance, it would be within the scope of your suggestion that New Brunswick would be entitled to put on a tariff as between Nova Scotia and New Brunswick.

HON. MR. JONES: Well, that was within the scope of what I suggested yesterday.

MR. STEWART: Or an agricultural products tariff as regards Prince Edward Island or Quebec?

HON. MR. JONES: That would be within that scope,



yes. But, we have to recognize, of course, what I say; that perhaps the more generally accepted meaning of regional tariff is a tariff imposed by the general government, applicable to commodities for use in some particular province, we will say, or some particular place, in order to encourage certain industries or certain business conditions in that particular case, and to apply to be used only for that purpose.

MR. STEWART: Something more like a bounty?

HON. MR. JONES: Well, yes, something more like a bounty.

MR. STEWART: As was given to iron at one stage?

HON. MR. JONES: Yes, something like that. I think perhaps that is the more generally accepted definition of the words "regional tariff". But, I go on and state perhaps what is the more practical remedy, reading again from page 51, the fourth paragraph:

" We submit that the most practicable method of affording to this province some compensatory advantages would be by means of a carefully considered adjustment of freight rates on shipments to and from the Province."

We send up some lumber to Ontario and Quebec, and I was speaking to a lumber man this morning and he said he has a contract up there, not very heavy, but he has to pay freight in competition with lumbermen near at hand to the place where the lumber is used, and for that reason he cannot pay his men; his men have to work for lower wages and under more difficult conditions, simply in order to get that trade. It is a question of the freight rates.

" This would enable our producers to have access to the markets of Ontario and Quebec on a less burdensome basis than now obtains and it





would relieve our consumers in the province to a large extent with respect to the high prices of commodities which they are compelled to use."

Parliament has made a reduction in railway freight rates amounting to many millions of dollars every year in the legislation relating to the Crow's Nest Pass<sup>5</sup> assistance to the Pacific Coast ports. The loss to the railways is directly assumed by the Dominion."

In reference to that, the Canadian National, the Dominion has to assume all that loss. The Canadian Pacific as I understand it, agreed to certain rates in consideration of receiving a large land subsidy, or something of that kind.

MR. STEWART: I think it was a cash subsidy on the construction of the Crows Nest Pass Railway; around \$3,500,000.

HON. MR. JONES: Yes.

COMMISSIONER DAFOE: And the rates are eastward, not to the coast. There are maximum rates on wheat to the lake ports, but there are also some maximum rates on certain commodities going from the east to the prairies. There are maximum rates on a list of commodities, but the main feature is the maximum rate on wheat which originally, of course, applied only to the C.P.R. main line, but under the pressure of competition was extended all over the west.

HON. MR. JONES: That would be the maximum rate on wheat to the Pacific Coast ports?

COMMISSIONER DAFOE: No, to the lake ports; it does not apply to the Coast at all. Of course, there is no cash subsidy excepting, as you say, if these rates add to the C.N.R. deficit, it is paid, but there is no provision for a cash remuneration to the railways for loss.



HON. MR. JONES: No, but it works out really in so far as the Canadian National is concerned in the same way.

COMMISSIONER DAFOE: Excepting, of course, it is an article of faith with the west, that when the wheat flows the deficit is reduced thereby, -- when the wheat flows in volume there is less deficit. That is an article of faith with the west.

HON. MR. MJONES: Yes. To continue from the brief:

" We wish to emphasize the fact that this Province is not insisting upon compensation in respect of this matter or any other matters which is referred to in this brief to the fullest possible extent. Our desire is to point out to this Commission and through this Commission to the Government of Canada some of the matters which might very well be considered as justifying our claim that some further assistance be provided. We are not approaching the Commission in an arbitrary spirit or with an antagonistic attitude. We feel it our duty to present the situation as we regard it."

Now, Mr. Chairman, in order that we might get on and reach Part II of the brief as quickly as possible, I thought of asking the consent of the Commission that we might pass over for the moment some of these other subjects, and take up, on page 65, the question of the Fisheries, and then I think, after that I would suggest taking up Part II; and afterwards coming back to clear up some of the shorter matters that are dealt with in the brief.

I would ask you gentlemen that I be permitted to make a little change in the wording of the brief at the top of page 66, in the second line. We have the word "Canada" there, and I would ask to substitute, "Great Britain", -- "Granted by Great Britain". We use "Canada" in a popular



sense. Also in the fourth line of the second paragraph "...given by Great Britain"; and in the first line of the third paragraph, "...Great Britain's share". I would ask that you strike out "Great Britain's share"; the object being to show that Canada as a Dominion was not interested in the award.

Instead of reading what we have in the brief, I thought perhaps, I might save time if I were to attempt to state the situation as I see it. We have here, surrounding the coasts of the provinces of Quebec, New Brunswick, Prince Edward Island, and Nova Scotia, great wealth in our inshore or coastal fisheries, and there always has been a great deal of wealth there. And the colony of Newfoundland is also much favoured in that respect. The people of the United States were always anxious that their fishermen should have the privilege of taking fish from those territorial waters that I speak of, and in the Treaty of Washington of 1871, between Great Britain and the United States, those fisheries and I do not say it in a critical sense -- were used more or less as quid pro quo for certain concessions made by the United States. At any rate, it was provided that for a period of twelve years the fishermen of the United States would have the privilege of taking fish from these inshore fisheries within the three mile limit, and certain privileges of landing on the shores of the provinces for certain well-defined purposes. It was not applicable to all forms of fish, but that is not material for consideration of the question. Canadian fishermen and British seamen had the same privileges in respect to coastal waters on the Atlantic seaboard of the United States within the three mile limit, north of the thirty-ninth parallel. In the treaty it was provided that if the value of the privileges granted to the





United States was more than the value of the privileges granted to British subjects in the United States waters, then the excess amount would be found as a fact by arbitration. Arbitrators were appointed, one by Great Britain, one by the United States, and one, the Chairman, was nominated by the Ambassador to Britain from Austria-Hungary, at London, England; However, that is not material. They met in 1877, ten years after Confederation, at Halifax, and they made what has been known ever since as the Halifax Award. Now, in that submission the agent of the British Government was a Mr. Ford, and the agent of the United States Government a Mr. Foster. As soon as the Commission met, Mr. Ford, the British Agent, asked that he might have the assistance of five counsel on the determination of this matter, and while it was objected to at first by Mr. Foster of the United States, the Commission finally granted the application and there were five counsel named at Mr. Ford's request, one for each of the provinces of Quebec, Nova Scotia, Prince Edward Island, New Brunswick, and one for the colony of Newfoundland. The names and the records of the appointments -- and I think it is very important in our submission -- the record of the proceedings of the Halifax Fisheries Commission, 1877, which purports to contain a record of those proceedings, on page 3 the names of the British Counsel are given, that is: Joseph Doutre, Q.C., of Montreal, representing the Province of Quebec; S.R. Thompson, Q.C., of Saint John, N.B., representing New Brunswick; Hon. W.V. Whiteway, Q.C., of St. John's, Newfoundland, representing Newfoundland; Hon. Louis H. Davies, of Charlottetown, P.E.I., representing Prince Edward Island; R.L. Weatherbe, Q.C., of Halifax, N.S., representing Nova Scotia. And in the order of the Comm-



missioners the same privilege was extended to the agent of the United States. Now, I speak of that because I think it is important to note that the Dominion of Canada was not represented there; apparently it never asked to be represented. The agent was the British agent, and the British agent asked for counsel only representing those provinces and the colony of Newfoundland who were interested in the award being made, and in view of what I expect to say, it is a very significant fact that the Dominion as a Dominion apparently had no interest in that award. I submit they did not really have any interest in it, and at that time they did not pretend to have any interest in it, but when they got the money they kept it, and that is what we complain of.

Now, the award was made by this Commission, at page 57 of the book, and as Mr. Stewart suggested we should have it read into the record and I think we should have it read into the record. Nothing turns on it except it is an award to Great Britain of a certain amount which was found by the Commission to be the value of the concessions made to the United States over and above the value of the concessions made in the United States waters. The amount was \$5,500,000. In 1879 the United States paid that amount to Great Britain, and it will be observed that the Dominion of Canada has not yet entered into the picture. Great Britain immediately transmitted \$1,000,000 of that fund to the colony of Newfoundland and the balance to the government of Canada. I have not been able to see what instructions were sent by Great Britain to the Government of Canada with this money, but my contention is, as I will attempt to show, that it was simply a trust fund, to be distributed to the owners, just in the same manner as if the United States came over into Ontario or New Brunswick





and cut millions of feet of timber for masts of ships or anything else, -- especially New Brunswick, because the province owns practically all the lumber lands in the province, and Great Britain had suggested to the United States the payment should be made, and payment was made to Great Britain for the trespass, or covering the damages sustained by the cutting of the timber lands of the province of New Brunswick.

Great Britain in the early days sent the money to the Dominion of Canada, but who can possibly say that the Dominion of Canada had any proprietary interest in that money? It was only as a means of communication between the British Government and the province of New Brunswick. Now, that was the way, I claim, that this money was sent to the Dominion of Canada.

COMMISSIONER MACKAY: Is there not a profound difference between timber taken off the lands of New Brunswick, and fish?

HON. MR. JONES: I am going to try to point that out, yes. I say no, there is no difference in principle, no actual difference under the decision of the Privy Council, but I simply state that as an illustration or to make plain what our contention is; that they took the property of New Brunswick and paid damages for it, and the share of that money which properly belongs to New Brunswick is the money of New Brunswick. Incidentally, I may say here that out of that sum of \$4,490,000 which was sent by the British Government to the Dominion Government, New Brunswick's fair share would be upwards of \$1,000,000 according to the value of the fisheries, as ~~nearly~~ as I can estimate it. And if we are right, if the Dominion has improperly retained that money, -- because we have not been able to



got it -- then I think we ought to have interest on it at 5 per cent, which seems to be a fair rate of interest on moneys wrongfully withheld, if they were wrongfully withheld and compounded today it amounts to the very tidy sum of upwards of \$15,000,000. As you gentlemen will see, this proposition which I make might seriously effect the position of the province in regard to fiscal need, because if we had that \$15,000,000 our fiscal need would not be quite so great as it is today.

THE ACTING CHAIRMAN: Mr. Jones, have you ever taken the matter up with the Dominion?

HON. MR. JONES: Yes, I am just coming to that.

THE ACTING CHAIRMAN: And the White Commission?

HON. MR. JONES: Yes, I am coming to that; I thought I would go along step by step, if I may. Then the provinces, or New Brunswick, we will say, protested to the Dominion of Canada that that money should be paid over, that the shares of the different provinces should be determined and the money paid over to the respective provinces. In 1882 a debate occurred in Parliament, the Dominion Parliament, with reference to that proposition, and the Government of the day claimed that it had a right to retain the money for two reasons: The first reason was that the Dominion, after Confederation, had a proprietary interest in the fisheries; and the second reason was that under the British North America Act the Dominion Government was charged with the expense of safeguarding the fisheries.

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And they even passed a declaratory act, I think, in the Dominion Parliament substantially to that effect.

Then, after that, about 1885 the Dominion, by legislation, provided for bonuses to the fishermen of Canada, not limited to any particular district but annual bonuses not exceeding in the whole the sum of \$150,000 a year, which was increased a few years later to \$160,000 a year. The money was not ear-marked or was not in terms specified to be the interest on that fund. And of course even if it were so specified it would not enable the Dominion to take our money and distribute it as bonuses or anything else. So that I say the bonuses that were given were purely a matter for the Dominion and in no sense the payment of interest upon this fund.

In 1903 and 1904 Mr. Pugsley was attorney-general of New Brunswick and I happen to remember something about it because I was here in the Legislature myself at the time. He was very strong in the view that New Brunswick had a very serious claim in reference to this money. I am a little bit ahead of my story, because the Privy Council's decision came in respect to these property rights and fisheries in 1898 and seemed to settle the question as to the ownership of the fish and fisheries within the three mile limit, the inshore fisheries, the only thing that was the subject of the valuation, because it was distinctly stated by both the British agent and the American agent on the inquiry into damages that only the inshore fisheries, coastal fisheries within the territorial waters of either country, should be taken as the basis of the valuation. And the Privy Council decided in the case of "Attorney-General for the Dominion of Canada and the Attorneys-General for the Provinces of Ontario, Quebec and Nova Scotia",





not particularly relating to the fishery award, but it is reported in 1898 appeal cases at page 700, and I want to get all this on the record.

THE ACTING CHAIRMAN: That is the first fisheries case?

HON. MR. JONES: That is the fisheries case, and in order that the Chairman also may have the benefit of it. These authorities are not mentioned in our brief because we just stated the facts and at the time did not have the authorities to cite.

Now, this judgment is very well stated at page 712 by Lord Herschell who expressed the opinion of the committee in which he says:

"Their Lordships are of the opinion that the 91st section of the British North America Act did not convey to the Dominion of Canada any proprietary rights in relation to fisheries. Their Lordships have already noticed the distinction which must be borne in mind between rights of property and legislative jurisdiction. It was the latter only" - that is the legislative jurisdiction - "which was conferred under the heading, 'Sea-Coast and Inland Fisheries' in s.91. Whatever proprietary rights in relation to fisheries were previously vested in private individuals or in the provinces respectively remained untouched by that enactment. Whatever grants might previously have been lawfully made by the provinces in virtue of their proprietary rights could lawfully be made after that enactment came into force. At the same time, it must be remembered



that the power to legislate in relation to fisheries does necessarily to a certain extent enable the Legislature so empowered to affect proprietary rights." And to conclude the sentence: "An enactment, for example, prescribing the times of the year during which fishing is to be allowed, or the instruments which may be employed for the purpose (which it was admitted the Dominion Legislature was empowered to pass) might very seriously touch the exercise of proprietary rights and the extent, character and scope of such legislation is left entirely to the Dominion Legislature."

For instance the same principle would apply as we have here on the River St. John, that the Dominion regulate the time when the owners of the rights may set out their nets and all that sort of thing, but the owners of the land or the province, as the case may be, if the land belonged to the province, are the proprietors of the fisheries and are the owners of the fish in the waters.

Now, as I say, the Honourable Mr. Pugsley, who was taking a very strong hand in regard to the matter, in fact during four or five years, until he was taken into the Dominion Government about 1907, he pressed this claim upon the Dominion Government and one occasion he joined with Premier Parent of Quebec and the government of Prince Edward Island, in endeavoring to have a case stated for the consideration of the Court. The Minister of Justice said that he did not quite agree with the draft case which had been presented, but he would look it over, and finally he refused to consent that a case be stated. Well, Mr. Pugsley, as I say,





went into the Dominion Government and the war came on shortly afterwards, and later on it was kept in view by Walter Foster, now Senator Foster, during his term as premier of the province with the Dominion Government, but nothing could be done, and, as I understand, by Mr. Baxter when he became premier, also took it up with the Dominion Government. But nothing was accomplished and it seems they simply had the money and in one of the debates that was held, which I speak of, in 1882, it appeared that the finance minister of Canada had not been very long in office and that he needed this particular fund and put it into the consolidated revenue.

Well, now, as to the first reason that the Dominion enjoyed proprietary rights, I think it is settled as a matter of law that they had no proprietary rights in these fisheries, any more than proprietary rights in fisheries along the river here and has never attempted to exercise proprietary rights in the inshore fisheries within the three mile limit. And there was no question before Confederation that the colonies not only owned the shore but owned the territory that Great Britain had in the coastal waters within the three mile limit.

As to the second reason given by the Dominion for keeping this money, that they were charged under the British North America Act with the duty of safeguarding and looking after the inland fisheries, sea-coast and inland fisheries, they claimed "Well, we can keep this money because we have to fulfil our duty under that section". But they had fulfilled that duty for ten years before this award was made, never any question about the duty. It was a separate and distinct matter. If this was trust money belonging to the Province of New Brunswick it should have been handed over to the



province of New Brunswick. The matter is so clear that I think it need not be argued that the Dominion Government had no right to compensate itself for something that was thrust upon it by Confederation out of this trust fund, without any consent of the province of New Brunswick.

So that it seems to me those two reasons fall to the ground, and that the money has been retained by the Dominion without any reasonable legal right or moral right.

The claim is now also made that "Oh well, we established these bonuses. We established these bonuses to all fishermen of Canada and therefore that ought to be accepted as covering the interest payments anyway". To that I say this: That the Dominion could not establish a schedule of bonuses with our money without our consent, no matter how it effected us. It was an unjustifiable use of trust funds. I regard it that they had those trust funds and it was purely a trust. They took no interest, as I say, in the proceedings and until they got this nice cheque from Great Britain they seemed to have no interest in the fisheries, and then they set up these two different reasons, but the real reason was they needed the money to go into the consolidated revenue fund.

Now, as to these bonuses, they took the money of New Brunswick, as they claimed, and they made regulations in regard to bonuses, as I say, \$160,000 a year. Even if it did cover the interest on the whole fund at a low rate, and it did not cover it anyway, but even if it did, it created regulations whereby some province - I may as well mention that Nova Scotia, by reason of its situation in fisheries, obtained five times as much out



of it as New Brunswick, more than five times, out of those bonuses, because they were granted to fishermen of the different provinces going out into the sea, deep sea fishing and so on, and so much for a vessel of so many tons and so much for a man employed on those vessels. And in Nova Scotia they had such vessels, and our business along the shores of our province was carried on by small boats within the three mile limit, and therefore we only participated to a very small extent in those bonuses.

For example, during the whole time since those bonuses were granted, New Brunswick got \$935,000, less than a million dollars. Nova Scotia got more than five million dollars on those bonuses. Well, certainly it could not be pretended that the value of their fisheries was that much greater than those in New Brunswick. As a matter of fact it will be shown in the brief that during the last six years, 1929 to '36 inclusive, I think, that the value of the fisheries in these certain waters in New Brunswick was 26% of the whole and in Nova Scotia 52%, about double the value apparently. But Nova Scotia out of those so-called bonuses received more than five times as much as the province of New Brunswick. Nova Scotia did not protest and of course we can understand that. I must say that I do not want to be understood as having anything against Nova Scotia or anything against the other provinces, but we are here in the interest of the people of New Brunswick and we have to say what we think, and we say it in all good faith and in all good humour and we would be, I think, derelict in our duty if we did not present these things as the people expect us in this





commission. We do not often have the opportunity. We had a couple of intermediate commissions but we do not often have an opportunity like this to ventilate all the matters that we have in our mind. Now this has never come up before any commission. This never came up before the Duncan or the White Commissions. It seemed to have been lost sight of at the time. And as I say Nova Scotia would have no reason to object to the treatment it has received and therefore one can understand that that province did not join in the proposed special case which Mr. Pugsley had drafted in conjunction with Quebec and Prince Edward Island, and presented to the Minister of Justice for his approval.

The point to be decided in that case was as to the ownership of the fisheries, and if the Dominion wanted to keep this money one can understand they said "Oh well, we have got this now and we are giving bonuses and we are administering it and we do not see any necessity of making any change." But at any rate it seems rather significant that the Dominion would refuse to let the court pass upon it. It does seem to be rather significant. I know that that suggestion was made to the Dominion that the courts be allowed to deal with this special case and I remember too that the Honourable Mr. Hazen who was leader of the Opposition at the time in the Legislature here observed that he believed this province had a good, fair and legal claim against the Dominion in respect to this money. Of course at that time the interest had not run up so high, but they claimed the money. I think they claimed two or three millions of dollars. Now, as I say, the time has gone on. We think if we are entitled to anything we ought to be entitled to the interest for sixty years, and it reaches the quite relatively large



sum, as far as this province is concerned, of some \$15,000,000 because at compound interest, at the rate of 5%, it would double itself in every fifteen years, and it is a matter very easily figured. However, for a few millions we are not so fussy about that, if we might even get 4%.

THE ACTING CHAIRMAN: Even 4%?

HON. MR. JONES: Well, I do not think we could cut it down quite to three. But even if these bonuses could be considered, which I say they could not in all fairness be considered as appropriate to the interest on this fund, is it not quite clear that that is an admission on the part of the Dominion that they have got the principal? People do not pay interest on principal money that they have not got. And I say even if that could be regarded as applicable to the interest on this fund, the principal is there, and at any fair rate of interest the bonuses have not amounted to that much money, and I think New Brunswick would be quite entitled to an allowance, even if the bonuses were applicable, because they have not been properly distributed.

Of course, the amount must be determined and that would require some inquiry, but we estimated it would be in excess of a million dollars taking these valuations into account. For instance there is set out in the brief these tables, the rates that are being paid as bonuses. On page 68 there is the total value of the products of the fisheries in the Maritime provinces and Quebec: New Brunswick \$28,000,000, Nova Scotia \$57,000,000, Prince Edward Island \$7,000,000 - I am just giving the round figures, - and Quebec \$15,000,000. The percentage of the total :

Prince Edward Island	.....	6.6%
Nova Scotia		53.0%
New Brunswick		26.1%
Quebec		14.3%





COMMISSIONER DAFOE: Nova Scotia would have been entitled to the lion's share of the award on that basis?

HON. MR. JONES: Yes, to double that of New Brunswick, but not five times as much. For instance, the bounties for Prince Edward Island 6.5% of the total bounties paid, Nova Scotia 58.8%, New Brunswick 10.7%, that is all the percentage that New Brunswick got out of these bonuses, 10%, and Quebec 24%.

The total amount of the bonuses paid since the inception of it are stated at page 67.

Nova Scotia .....	\$ 5,122,717.77
New Brunswick	935,144.67
Prince Edward Island	563,995.47
Quebec	2,086,424.90
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	\$ 8,708,282.81

COMMISSIONER DAFOE: In 1879 when the Dominion impounded this money, was there any protest at the time from the provinces?

HON. MR. JONES: I think that is all shown in these debates in Parliament. They are very long, these debates.

COMMISSIONER DAFOE: But the debate was in 1882, I understood you to say?

HON. MR. JONES: The debate was in 1882, yes.

COMMISSIONER DAFOE: At the actual moment when the money was put into the consolidated fund was there any discussion in the Dominion House or was there protest from the provinces?

HON. MR. JONES: Yes. I have not been able to find that. I must say I have not looked for that, as to the protest.

COMMISSIONER DAFOE: Perhaps it should be borne in mind that the Minister of Finance who impounded the money was Sir Leonard Tilley.

HON. MR. JONES: Yes, that is correct.



COMMISSIONER DAFOE : Who must have been a little oblivious to Maritime rights.

HON. MR. JONES: Well, I would not like to say anything about that. But just what was done by the provinces? The Provinces have always been too easy - too easy. They allowed this to go on now for sixty years simply because, well, I think very often because, with all due respect, the upper provinces, or not the provinces but the newspapers and so on, - I don't know that it extended as far as Winnipeg - "Oh well, if the Maritimes made any complaint, they are always whining around and they always want something anyway". I think it rather discouraged us from asserting our just rights. At any rate the point was made. But my impression is that what brought it up in Parliament in 1882 must have been the protest of the Maritime Provinces surely, because the money was paid -- I do not know the exact date when the money was paid but that could be ascertained.

COMMISSIONER DAFOE: It came into the hands of the Dominion in 1879.

HON. MR. JONES: Well, that is what my recollection was. And there must have been protests immediately, in order for this discussion to take place in the session of 1882.

I have been mistaken. This is 1880, the debates. I am sorry, I had in my mind 1882. But here is the official record, the debates of 1880 in Hansard, beginning at page 1171 and continuing. I did not want to read it into the record because it was too long.

THE CHAIRMAN: Are you speaking there of the motion of Sir Leonard Tilley?

HON. MR. JONES: They are speaking here "House Resumed adjourned debate on proposed motion". Then it goes on,



"Mr. Killam", I will just read there:

"I desire to ask if the papers in relation to this subject, which the hon. the Minister of Finance stated, were necessary to its proper consideration, and which he also stated would be laid upon the Table this afternoon, will be brought down this evening?"

Sir SAMUEL L. TILLEY: What I stated was that papers were being prepared which it was necessary the Government should have, before proceeding with this discussion. From this statement the inference was drawn by some hon. gentlemen that these papers would be laid upon the Table. I have made enquiries concerning them, and I expect they will be laid on the Table of the House before the conclusion of this debate."

And then Mr. Richey starts. They are just discussing the procedure at first here. The whole thing is discussed from there, as I say, right along, and I presume there was some resolution, I am not just sure whose it was. But the fishery award was discussed very fully and by Sir John Macdonald, who was premier at the time, there is a very complete statement of the position of the Dominion Government contained in those pages that I have mentioned. They go on to page 1226. The House divided on the amendment made by Sir John A. Macdonald. I did not look up the exact motions that were made but the effect of it was that the Dominion was going to keep the money for the reasons I have stated. But there is the resolution in the session of 1880.

COMMISSIONER DAFOE : What is the page number?

THE ACTING CHAIRMAN: Instead of 1882 it should be 1880.?





HON.MR.JONES: Well, I did say 1882, but I was stating it from memory. We will check the brief also. But this debate occurred and is noted in Hansard in 1880 and the pages I have given, doctor, from 1171 to 1226.

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I would like to change the reference in the brief because it seems that the brief has the year 1882.

COMMISSIONER DAFOE: That is a reference to a different matter, I think. The brief may be quite correct.

HON. MR. JONES: Yes, that is correct, sir.

COMMISSIONER DAFOE: An earlier paragraph shows that the matter was considered by parliament in 1856. What probably happened was that the money was put into a consolidated fund in 1879 and the following year some opposition member raised the question; no doubt that is what happened.

HON. MR. JONES: Yes, so that it does indicate there was money produced because this debate was in April, I think.

COMMISSIONER DAFOE: Apparently where New Brunswick made its mistake was that it did not renew the pressure after Mr. Pugsley went to Ottawa.

HON. MR. JONES: Yes, that is probably so.

COMMISSIONER DAFOE: Mr. Pugsley was very active in presenting the case and he went to Ottawa in 1907. Pressure should have been applied immediately after that.

HON. MR. JONES: Yes, it should have been applied immediately. I do not know, though, it was not many years before the war and we had our political difficulties here, in New Brunswick. I do not know why it was not proceeded with actively. Then, after the war there was some little communication, as I say, between Senator Foster's government and Mr. Baxter's. Any way, they could not get the subject started because I know that Mr. Pugsley was very insistent and during different sessions he was called upon to explain to the House what was being done about these claims. He had the eastern extension





claim as well as this fisheries claim. The way I take it--it does not matter--but it shows perhaps that we were too easy going and, as I say, we have done a good many things. However, it does not affect the principle that the Crown is supposed to be fair, and we rely upon that. Just as in the statement in our part two of the brief, we are not insisting on the strict letter of the law, if you like; we do not have to. If we had to, we might apply it in this claim as well, but we regard it in the light of the principle that the King should be the fountain of justice, as he is often called. No matter how bad the government is, we always consider that it should do what is right; we rely upon that. As it has been shown now, protests must have been made very frequently. Of course, it may be that it was not urged very strongly until the decision of the Privy Council in regard to the fisheries case, but after that, it seems to me that it must have been rather a difficult matter for the Dominion to retain that money. The Dominion must have been driven to the excuse that it was these bonuses; but these bonuses were not paid to the province, they were paid to the fishermen. There could not be any recognition by the province that this was acceptable. In fact, it was never acceptable because, in Mr. Pugsley's statement or attempted statement the inconsistency and unfairness as between the provinces was pointed out. Why the British government paid just \$1,000,000 to Newfoundland, I have not been able to discover, but it might be interesting to find that out. This was an attempt to distribute the fund. Newfoundland, of course, at that time, was not a part of the Dominion. Neither was Prince Edward Island, a member of the Dominion in 1871; I do not think that Prince Edward Island came into Confederation until 1873. The position of this



province is simply this, that the monies, as I have said before, were trust monies and the King, as represented by the Dominion and as represented by this province, should deal with those monies properly. If we had had that money, we would have had an opportunity to spend it. I do not mean that we would have spent it improperly, but it might have saved us a tremendous amount of interest. The Dominion could safeguard the fisheries because that is its duty under the Act of Confederation. We would like to have the right, if we want to use that money to supply aid to the fishermen, we want to do it in our own way. We want to aid the fishermen in our own province with our share of the money. I am not raising this question and the province is not raising this question in any sense of considering, "Oh, well, it might as well be raised". We are not raising it in that sense, we are raising it as a serious claim against the Dominion for \$15,000,000 and we are not going to drop it any more. We dropped it as Commissioner Dafoe says, but now, I feel I can speak positively for the government when I say that we do not propose to drop it again.

MR. STEWART. In order to establish your claim to this as a trust fund, would you not have to show that the monies were paid by Great Britain to Canada on terms which would raise a trust of some kind.

HON. MR. JONES: I do not think so; for instance, if John Smith received money which belongs to me and he pays it to John Brown, John Brown has that money which belongs to me. John Brown must be presumed to be a trustee for me because he has not any interest in the money.

MR. STEWART: You do not dispute the right of Great Britain to receive the award?

HON. MR. JONES: No, I think it should have received



the award.

MR. STEWART: Surely, it depends upon the Crown's distribution of that money, whether it is in trust for the province or not.

HON. MR. JONES: I do not think so. We will say that Great Britain is some individual or corporation, and it has sent money belonging to us to a certain company or individual. That money does not lose its characteristics as a trust fund, simply because the custodian of the fund, Great Britain, said, "Well, this is the money we are going to give to you".

MR. STEWART: You are suggesting, therefore, that it was a trust fund when it was received by Great Britain?

HON. MR. JONES: Yes, I say that it was trust money when it was received by Great Britain. We must get back to that to be consistent. Great Britain received it because she was a party to the arbitration; Canada was not and neither were the provinces. The money had to go to Great Britain, but Great Britain was still a trustee. The King, in the right of Canada was a trustee of a fund for those who were entitled to it.

MR. STEWART: That would depend upon the terms of the award, would it not?

HON. MR. JONES: The award, we have here.

MR. STEWART: Suppose Great Britain turned it over to Canada to dispose of it as Canada saw fit, would this trust argument apply then?

HON. MR. JONES: All through that debate in Canada, this was never claimed, so that is pretty good evidence that it was never turned over in that way. Of course, we have not been able to find, yet, just where it was turned over. I have a copy of the award, Mr. Stewart,





some place. I thought I had the page, but I will hand in a copy of the award, with the reference. It must be in this journal some place.

THE ACTING CHAIRMAN: We will put it in the record when you hand it in.

HON. MR. JONES: I thought so, yes, that is what I would like. We will look up a copy of the award; it was simply an award to Great Britain for the additional valuation.

The resolution, Mr. Chairman, which was moved in the House of Commons is contained on page 787 of Hansard in 1880. This was moved by Mr. MacDonald of Inverness "The House will now go into the committee of the whole to consider the following resolutions." I might say, that Sir Samuel Tilley, just after he stated this resolution said, "I wish the honourable gentlemen would let this matter stand. Certain returns have been asked for which are really indispensable to the discussion of the subject. This seems to be the resolution, and yet it is a resolution by a private member. I think it must have been amended.

THE ACTING CHAIRMAN: You have a copy of the 1880 Hansard?

HON. MR. JONES: Yes, I have.

THE ACTING CHAIRMAN: Will you look at page 1187, that is where the resolution is, according to Professor Maxwell's book.

HON. MR. JONES: That is the amendment to the resolution. This would be the substance of the whole thing. It is an amendment by Sir John MacDonald in which he says:

"That all the words after 'that' be expunged, as also the proposed amendment thereto and the



"following inserted thereof:--'By the British North America Act, 1867, the seacoast and inland fisheries in the Dominion and the control, regulation and protection thereof, were vested in the government and parliament of Canada.'"

The seacoast and inland fisheries, according to the Privy Council decision, were quite the reverse.

"That the responsibility and duty of regulating and protecting such fisheries were, from the first of July, 1867, undertaken by the federal government and legislature. That great expense was thereby passed upon and defrayed from the Dominion treasury. That such responsibility cannot constitutionally be surrendered or transferred to any of the provinces, and if it were possible to do so the transfer would be injurious to the best interests of the provinces, more immediately concerned in the development of the fisheries as they would be alike legally and pecuniarily unable to bear the burden and afford the necessary protection. That the duty of fostering and protecting the fisheries is certain to entail great expense on the Dominion in the future. That such expenditure and the public advantage to be derived therefrom are correlative and the portion of the fishery award paid over to Canada constitutionally and of right belongs to the Dominion of Canada."

Needless to say, that carried later on. Of course, he was wrong, unless the Privy Council was wrong. The Privy Council is often wrong--I mean some people say that it is wrong, but I do not know that it was said to





be wrong so often in the early days. In 1898, there did not seem to be the same reflection upon the decisions of the Privy Council that there is now. At the time of that amendment, this Privy Council decision had not been made. At that time the Dominion did not have a proprietary interest in the seacoast and inland fisheries, and, as I said before, the Dominion cannot take our trust money to help the Dominion carry out its business under Confederation. Supposing the Dominion received one million dollars of ours and then said, "Oh well, we have to do so and so, under Confederation, therefore, we will just keep this money belonging to the province and it will help us to carry out our duties which devolve upon us by law." New Brunswick receives this treatment simply because it is easy going. It is said of New Brunswick, "Oh, they are always making raids upon the treasury." I want to repudiate that suggestion in the strongest terms. I take it that this province and the government of this province made no application or demand except where it was justified. As I say, this was dropped and forgotten for years simply because the province of New Brunswick has been told that it makes raids upon the treasury. The attitude is taken towards New Brunswick, "Oh, they are the shreds and patches of Confederation, they are no good anyhow, we will throw them a bone and let them eat it." This is the attitude of some people, but I do not want to say that it is the attitude of all people. Some people believe that New Brunswick does not amount to much, after all. It is an easy matter for the people to say that we, in New Brunswick, are disloyal because we try to secure our rights. You know, we do not like to be called disloyal; we do not like that, therefore, we have refrained sometimes from asserting our rights. As Doctor



Dafoe says, we should have been more active in this matter. We should have been, but I think, what I have been suggesting has had a great deal to do with our attitude on the question. In reference to the eastern extension, Mr. Pugsley was years getting that through, but he finally achieved it. There does seem to be that attitude--I am not criticising any government because the Tories were as bad as the Liberals, so far as I am concerned--of, "Well, I am superior I have money." It is just the same with some rich fellows, like ourselves, we might say, "Give them this, this will have to satisfy them."

I remember when I came down to the legislature, the premier did not want to make it too easy for the members to get things from the government. Even when it was only the appointment of the Justice of the Peace, he hesitated quite a while. He said, "I do not want to let these fellows get off too easy, because then they think they can get everything. I like to make them think it is a very important appointment", and so on.

Seriously, I think I have stated the position of this province in this matter.

THE ACTING CHAIRMAN: I think you have made your position quite clear.

HON. MR. JONES: In other words, it is about time for me to stop on that question. I think, unless there are some questions, perhaps it would be better to continue with the brief. I intended to go at once to part two, but there is an agricultural matter which I think we should take up briefly at this point.

THE ACTING CHAIRMAN: On what page is that contained?

HON. MR. JONES: It is on page 69. I do not think it will involve very much time, but it will give me a chance to rest. Mr. King, the Deputy Minister of Agri-



culture will be here.

Before taking up that branch, I would like to read the award of which I was speaking. I would like to read it into the record. I have found it here in this volume to which I have referred of the proceedings of the Halifax Fisheries Commission, at page 53.

THE ACTING CHAIRMAN: What volume is that, Mr. Jones?

HON. MR. JONES: It is the volume to which I have already referred, not the Hansard, but a record of the proceedings of the Halifax Fisheries Commission which fixed the amount of the award. The reference is contained on page 53.

Quoting from the record:

"The president then read the following award:--

"The undersigned Commissioners appointed under Articles XXII and XXIII of the Treaty of Washington of the 8th of May, 1871, to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XII and XXI of said treaty, the amount of any compensation which in their opinion ought to be paid by the government of the United States to the government of Her Britannic Majesty, in return for the privileges accorded to the citizens of the United States, under Article XVIII of the said treaty;

'Having carefully and impartially examined the matters referred to them according to justice and equity, in conformity with the solemn declaration made and subscribed by them of the fifteenth day of June, one thousand eight hundred and seventy-seven;





"Awarded the sum of five millions five hundred thousand dollars, in gold, to be paid by the government of the United States to the government of Her Britannic Majesty, in accordance with the provisions of the said treaty.

'Signed at Halifax, this twenty-third day of November, one thousand eight hundred and seventy-seven."

It is signed by Maurice Delfosse, who was the chairman and A. T. Galt.

Quoting again from the same page:

"'The United States' Commissioner is of opinion that the advantages accruing to Great Britain under the Treaty of Washington are greater than the advantages conferred on the United States by said Treaty, and he cannot therefore concur in the conclusions announced by his colleagues.

'And the American Commissioner deems it his duty to state further that it is questionable whether it is competent for the board to make an award under the Treaty, except with the unanimous consent of its members.

E. H. Kellogg,  
Commissioner."

After that, Mr. Foster, as agent of the United States made a further observation. I think that is all.



MR. J.K. KING, Deputy Minister of Agriculture, was called.

HON. MR. JONES: Mr. King, you are the Deputy Minister of Agriculture, are you not?

MR. KING: Yes, sir.

HON. MR. JONES: Have you read that part of the province's brief relating to agriculture?

MR. KING: Yes.

HON. MR. JONES: It begins at page 69. Now, Mr. King, without going over that particularly, you are here to submit anything that you regard as important in connection with it, to modify the statements or to make suggestions, and also to speak particularly as to the question of overlapping between your Department and the Department of Agriculture at Ottawa. You can go on now, and not at too great length.

MR. KING: In reference to overlapping of services, I would answer that question absolutely in the negative. The general arrangement is that the Dominion and provincial officials in any cooperative or joint policies eliminate overlapping by mutual agreement, and allocation of certain features of each policy to certain officials, whether they be Dominion or provincial; the popular conception being that an agricultural official covers the whole field and consequently if there are two bodies there must necessarily be overlapping, but those who give the matter study can see how that can be a very wrong conception.

BY MR. STEWART:

Q. What is the division between your Department and the Dominion Department of Agriculture? A. The provincial activities might be summarized as educational, production, and administration; whereas the federal



activities are experimental and investigational, --- research, grade standards, and the enforcement of same, with the possible addition of livestock health and administration of the Animal Contagious Diseases Act.

Q. Do you think that research and experimental work and animal health are properly federal objects? A. I think there is an advantage in that being in a central body.

Q. With respect to the balance of agricultural activities, do you think any advantage would be gained by having a central administration of such activities; that is, the activities carried on by the province? A. It is difficult to see where a central organization could have that contact with the problems of the various provinces to the extent that a province can.

Q. In order to be effective in your view if there were a central administration it would have to have local branches? A. Absolutely.

Q. And that would not involve any saving over the present method of administration? A. I cannot see where it would.

Q. What activities does the federal department maintain in the province of New Brunswick? A. They have one experimental station, with nineteen illustration farms.

Q. Is the province engaged in that field, in the maintenance of illustration farms, or experimental farms? A. No, sir.

Q. Have you an agricultural college in New Brunswick? A. No, sir.

Q. There is some arrangement between the three Maritime provinces whereby the farm at Truro is available on some terms? A. The Agricultural College at Truro has been looked upon as a Maritime Institution. I know of no definite arrangement. The Maritime students there are





admitted on a par.

Q. The province pays the travelling expenses of students to the Agricultural College? A. Yes.

Q. Now, on the subject of marketing, I think you said grading and grade standards were necessarily a matter for Dominion legislation and regulation, is that right?

A. Yes, sir, the grading of natural products, to fixed standards, is in my opinion absolutely essential if Canadian products are to compete successfully in world markets.

Q. Is there any New Brunswick legislation dealing with grading and grade standards? A. Yes sir, we have an Act covering natural products and an Act respecting the control of natural products.

Q. Have you the citations of the year those Acts were passed? A. They were passed in 1937.

Q. They were passed last year? A. Yes.

Q. What is the effect generally of these statutes from an administrative point of view? A. The statute respecting natural products permits of setting up by the Governor-in-council of Grades for any of the natural products, which include fish, agriculture, and forests.

Q. Does it tie in with federal control of standards, -- grading? A. The grades that have up to the present time been established under that Act have been identical with Federal grades on the same products.

Q. And the administration or enforcement of your Acts are under whose jurisdiction? A. Technically they are under the jurisdiction of the province. The actual work is carried out by Federal inspectors in conjunction with their duties in interprovincial and international movements.

Q. As a matter of fact, in the act itself the province



has power to appoint the federal inspectors. Is there the particular marketing or grading scheme applicable to the smoked herring industry? A. Yes, we have under the Natural Products Marketing Act regulations set up for the marketing of smoked herring.

Q. You might explain as to how that works?

A. Under the Federal Natural Products Marketing Act there was a scheme, I think it was called, set up for the marketing of the smoked herring from that area which was in operation approximately eighteen months, and when this legislation was declared ultra vires the people who had been operating under the federal Act approached the provincial department to provide legislation so that they could continue in the same manner, and that was one of the reasons which resulted in the Natural Products Control Act. They then continued on on practically the same basis as they had been previously operating under the federal legislation.

Q. And that is working with some satisfaction?

A. Ninety-five percent of the smoked herring producers, after experiencing eighteen months of control took a second vote and it was even stronger, than the previous vote.

Q. It has had the effect of stabilizing prices and wages both? A. It has a very definite stabilizing effect, and if anyone wished a really strenuous debate all they would need to do is go to Grand Manan and take issue with the people there in the marketing plan.

Q. At one of the sessions of the commission in Ottawa the attention of the Commission was called to the fact that New Brunswick had undertaken the appointment of representatives to further the sale of New Brunswick products in foreign countries, and the suggestion was made that that might involve duplication of effort of the



Department of Trade and Commerce; not that it had but that it might lead to duplication of efforts. I would like to get your views on that, Mr. King? A. Previous to the province of New Brunswick taking action in regard to the developing of markets for potatoes in South American countries for approximately eighteen months we petitioned the Federal Government to take the action that we in the end were forced to take on our own behalf. We felt that it was a federal responsibility in as much as the results would not entirely effect any one province but would be of benefit to all five eastern provinces; therefore, it was not the sole responsibility of any individual province to go to that expense. We also went so far as to offer to pay half the expense of such an investigation. In that connection, I might say, in 1935 there were approximately 1200 crates of 110 pounds each of potatoes shipped to the Argentine Republic, at which time the province assisted to a certain extent, in as much as it was a demonstration. We followed this up when Ottawa did not see its way clear to have a representation sent down, by sending a representation from this Province. The next year there were approximately 70,000 crates of potatoes shipped to the Argentine Republic, and in 1937 there were approximately 700,000 crates shipped to a similar area.

Q. That would be roughly a million and a quarter bushels, in 1937? A. Yes. I would also like to mention that previous to our taking action in developing these markets that a representative of the Minister of Agriculture for New Brunswick and representatives from the five eastern provinces met at Toronto and discussed the question of developing additional markets, at which time a unanimous resolution was passed, requesting the Dominion Government





to take the necessary steps. That was pressed at Ottawa and they were either not in a position or did not consider the matter of sufficient importance to take the action we desired.

Q. Prior to that time the potato growing districts were in rather severe stress, were they not, on account of the lack of markets? A. Yes, in some years; I think it was in 1935 that potatoes dropped to a low of ten cents per barrel of 165 pounds at shipping point.

Q. In addition to the value of these operations to the potato growers I suppose it meant something to the lumbermen also? A. The packing of these potatoes would require in the vicinity of 6,000,000 feet of lumber, seventy-five tons of nails. At one time there were 1,400 cars of potatoes in the terminal points at Saint John, or a total of about 1,800 cars of potatoes to make up this movement, which not only gave employment to our lumbermen, small mills, <sup>but</sup> to the railway men, and to the stevedores in the port of Saint John, and this built up to a very tidy sum.

Q. Are you able to tell me, Mr. King, what potatoes were displaced by this selling operation in the Argentine market? A. I do not quite follow your question.

Q. Well, the development of your trade from 1,200 crates to 500,000 crates, was that an increased demand in the Argentine or did the New Brunswick potatoes take the place of other potatoes on the market? A. I think it was largely an increased demand because of the better results they were able to obtain from potatoes free of disease.

Q. They were really displacing their own potatoes? A. To quite a large extent, although it would also, I suppose, have an effect on other importations from certain



European countries.

Q. Returning again to the Grand Manan herring scheme, do you think that from a practical working point of view marketing can be better handled by the province or the Dominion? A. If you take that in sections, --- by that I mean there are two very definite functions in marketing; the organizing of the producers, then the actual machinery, or the distribution. The province in connection with their educational and production policies, which are very closely allied to marketing policies, possibly would be in a better position to handle that part of the field. But in view of the Federal government having international contacts, they could render great assistance in supplementing that field or providing the information that is necessary for efficient marketing.

Q. I suppose if the matter were left entirely to the province it would be very difficult to regulate any conditions where there was competing production in two or more provinces? A. That is a difficult matter.

Q. Your herring industry at Grand Manan does not compete with any other Canadian industry? A. No similar products.

Q. That is one of the reasons for the success of provincial enterprise. But, in the broad view you think the distribution can best be handled by Dominion legislation?

A. In regard to Grade standards, developing especially foreign markets.

MR. STEWART: That is all I have to ask on the subject of overlapping, Mr. King.

MR. KING: I have just had brought to my attention an extract from House of Commons debates, page 3056 to page 3058. This is an extract from which I would like



quote. It is dated May 12, 1930. On a question raised by Mr. MacLean of Prince Edward Island, quoting Mr. Gardner:

" About a year and a half ago the Government of the province of New Brunswick sent a man to the South American countries in order to explore market possibilities there. At that time we did not have either the facilities or the funds to assist in that work, but last year we appointed a representative to go to South American countries and explore the possibilities of creating a market for potatoes through<sup>out</sup>/all the countries in which it is possible for our seed potatoes to be sold."

HON. MR. JONES: Mr. King, have you any comment to make as to whether you approve of these statements in the brief as to agriculture, or do you think it needs explaining in any way? Or any part of it? If not, we will let it stand as it is, unless there is something you wish to comment on we will have finished with the subject.

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(Page 8789 follows)

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MR.KING: I might add that particular attention be paid to that part of the brief dealing with the act in aid of agriculture passed in 1913 by the federal government which proved a great deal of value in advancing agricultural education in the province of New Brunswick, and that has been brought to the attention of the Federal Government to have similar legislation brought into effect, because it is understood that was for a ten year period and expired, I think, in 1922, or approximately then.

The effect of that assistance was to set up machinery and to carry on an agricultural educational program, but when there were no further funds available the province had to assume the whole load. And it would be of great assistance in agricultural development if the province could be assisted in order that a more extensive agricultural educational program be carried on.

There is another example also of the federal department of agriculture establishing a service known as, I think, under the federal department, as Cow-testing Associations. The farmers of New Brunswick took quite extensive advantage of this service. Some few years ago we were notified by the federal department that they were discontinuing this service. They gave us, I think, approximately a year's notice. There was such a demand on the part of New Brunswick farmers for the continuation of this service, that the provincial department had to take it over at a cost of from ten to fifteen thousand dollars per year, which is another indication of the orphan being laid at the province's door.

I do not think that there is any other section of the brief that needs any particular reference.

HON. MR.JONES: You would adopt the other statements



made as a part of your statement?

MR.KING: Yes sir.

THE ACTING CHAIRMAN: Thank you, Mr.King.

HON. MR.FONES: Mr.Chairman, the suggestion was made yesterday that there may be some explanation as to the duties and the situation of the Department of Federal and Municipal Relations in the province, and I would like to call the director in order that he may be able to give any information that the Commission requires.

J.H. CONLON, Director of Federal and Municipal Relations was called.

MR.Chairman and gentlemen:

The Department of Federal Relations, with which is also associated Municipal Relations, giving a picture in both directions, to the municipalities and to the federal, was established less than two years ago and its completed organization is a matter of adjustment largely from what has been to what appears to be a more efficient and more business-like method of handling inter-government transactions.

"Heretofore there has been no definite or fixed point of contact between the Provincial and Federal Governments or between the provinces themselves, which fact, probably more than any other element, has led to misunderstanding and lack of appreciation of the viewpoints of others.

Originally there was at Ottawa a department of Secretary of State for the Provinces. It was reasonable to assume that it was the intention that it was expected a corresponding department would be established in the Provinces, although I have been able to lay my hands on no documentary



evidence to that effect. The fact that the Provinces did not respond probably accounts for the fact that the Department of Secretary of State for the Provinces at Ottawa became merged with the other departments and that the original general intention has not been carried out.

Our Department of Federal Relations contemplates the renewal of the original plan.

There are three types of contact betw on the provincial and the Ottawa Government:

- 1.-- The exchanges between the executive governments of Canada and the Provinces.
- 2.-- Major discussions and engagements between corresponding departments in Ottawa and the Provinces.
- 3.-- Routine contacts between corresponding departments.

Respecting the first, that is the exchange between the executive governments, it is considered that the contact should be through a Department of Secretary of State for the Provinces, to the Lieutenant-Governor, the Department of Federal Relations to the government and vice versa.

Major transactions now carried on directly between corresponding departments may be routed through the Department of Secretary of State for the Province and its Provincial Department of Federal Relations.

As to routine matters the direct contact is essential for the successful co-operation of co-related departments.





Heretofore there has been no continuity of contacts between the various governments in Canada.

There has been no systematic preservation of public records regarding inter-provincial or provincial-federal dealings and consequently we have been unable to profit to the fullest extent from the experience of the past. We have simply been limited to what was retained in the memories of those who were still in office or engaged in public life.

At present our Department of Federal Relations is keeping a record of all major correspondence between the various departments of government.

This will have a co-ordinating influence.

On the other hand we have been working to enable the various services in the province to take the fullest advantage of the various services available at Ottawa. And I must say that the willingness on the part of the various departments at Ottawa has been very impressive and practical.

In a broad way then, the plan we have started seems to lead the way for a continuous contact between the governments, which will serve to promote close co-operation, understanding and goodwill. Problems may be discussed as they present themselves and there will be less opportunity for the weakening of the bonds of union."

BY MR. STEWART of Mr. Conlon.

Q. Mr. Conlon, you divide the provincial government communications into three classes, the first is reserved entirely for communications between the federal municipal



minister and the Secretary of State for the provinces. The third is left to direct communication between corresponding departments?

A. That is all routine matters where there is a continuous contact, yes.

Q. Dealing with the second class, that is points of major interest, major negotiations between two corresponding departments ---

A. In that classification I would take such a case as, well, Mr. Jones during the presentation of his brief has made reference to several agreements that may be made with the provinces to solve certain problems. In those particular instances it is suggested that the contact would be through that department of federal relations for the purpose of keeping a permanent record, so that continuity may be established through the years and not broken up at any particular time. Now these records may not be available, they may be scattered through the departments, in some cases there has been no record kept, and records have disappeared. There has been no permanent record.

Q. Is there not a danger of very serious duplication within the provincial sphere, of having double records, in the records of the department concerned and then in the records of your particular department?

A. As I say, it is a matter of development from what exists to what has been planned, and during the course of transition there may be duplication but the idea is to have all those concentrated so that the major work, those major transactions, there would be a record kept altogether.

Q. And the scheme when functioning fully, with the secretary of state for the province of Ottawa, would again involve duplication at that end?

A. Well, I think there would be no duplication there, except would it not be more of a consolidation?



The Premier in his opening remarks did observe, he rather prompted the idea of an annual conference and I think did suggest there that the Department would serve as a permanent organization for making continuity of that work. I can see the thought you have in mind, Mr. Stewart, on overlapping. In the process of changing from one system to another that is quite possible. But when we make an established fact those records, and if these channels of communication were being employed, it would serve to consolidate it and centralize it.

Q. Would there not be a tendency also to make the Department of Public Relations sort of a jack-of-all trades, they would have to be familiar with the plans and workings of all departments of government, both here and at Ottawa? A. Well, very largely, and it is my own thought that that is very desirable.

Q. Of course, a man can only be expert in a very few lines at once? A. When you speak of the department you are not speaking of an individual, as time goes on it might be necessary to enlarge the department to take care of the very situation you raised.

Q. Have a number of liason officers? A. Yes.

MR. STEWART: That is all, thank you.

HON. MR. JONES: Mr. Chairman, there was some suggestion also that a statement might be made in reference to insurance and Mr. McLatchy is here I think, we might hear him now. He has prepared a statement of which he has handed me a copy and I would like him to present it. Yes, I have a statement here. If he is not here I will hand it in, but I think he will be here presently.

THE ACTING CHAIRMAN: Yes, in case there are some questions.

HON. MR. JONES: Yes.





E.B. McLATCHY, Superintendent of Insurance, was called.  
BY HON. MR. JONES of Mr. McLatchy:

Q. Mr. McLatchy, your present position with the Government is what? A. Superintendent of insurance.

Q. Some suggestion was made yesterday that perhaps the Commission might like to ask some questions with reference to this matter?

MR. STEWART: As a matter of fact, Mr. McLatchy has placed in our hands a very full memorandum and I thought it might be well to have that marked and filed. There are just one or two points that occur to me outside of that.

THE CHAIRMAN: It will be filed as exhibit 365.

EXHIBIT NO. 365 - Memorandum prepared by  
Superintendent of Insurance.

HON. MR. JONES: Have you copies of that memorandum?

MR. McLATCHY: Additional copies are being made and I will have them available this afternoon.

THE ACTING CHAIRMAN: Thank you.

BY MR. STEWART OF MR. McLATCHY :

Q. When a company holding a Dominion licence applies for a licence to your Department, Mr. McLatchy, what information do you require, and what steps do you take before granting a provincial licence? A. We require them to file a copy of their act of incorporation - that is in the case of a Dominion licensed company?

Q. Yes? A. To file a copy of what we call a modified statement of its financial condition, to furnish information regarding their capital set-up, and to file a copy of a power of attorney to some agent or representative within the province and to furnish information as to the Canadian chief agent and the situation of the head office.



Q. And I suppose a certified copy of their Dominion licence? A. No, that is furnished automatically by Ottawa.

Q. Are such companies audited by you on behalf of the provincial government? A. The Dominion Licence companies, no.

Q. You accept the Dominion audit? A. Yes.

Q. The suggestion has been made on several occasions that a sound division of authority in respect of insurance would be for the provinces to deal with the licensing of agents and the form of the insurance contract, the form and law of the insurance contract, but that other matters, such as registration and audit should be matters for the Dominion? A. I would say yes, on a matter such as audit as to its financial position.

I think it would be a question whether you should say the Dominion should deal with the matter of its solvency and financial condition and the province the rest or whether you should say the province should deal with agency and contracts and the Dominion the rest.

Q. Are there in your opinion, cases of small local companies, perhaps co-operative organizations, that should remain subject to the jurisdiction of the province? A. Well, I think they would have to remain subject to the jurisdiction of some person with an intimate knowledge of local conditions, because as we have those companies in New Brunswick, and we only have two, a very close contact is necessary.

Q. For advisory purposes? A. In an advisory capacity, yes.

MR. STEWART: I think that covers everything apart from the brief. The brief is very full and comprehensive.

THE ACTING CHAIRMAN: Thank you, Mr. McLatchy.

HON. MR. JONES: That is all, Mr. McLatchy, thank you.



HON. MR. JONES: Now, there are two short subjects left.

THE ACTING CHAIRMAN: I think there are four. There is, Debt Allowances, Public Lands, Freight Rates and the Fish Canning Industry.

HON. MR. JONES: With respect to debt allowances, we have expressed our view in the brief, and unless there are some questions to be asked, I do not think it will be necessary to read that portion of the brief. I presume the Commission will have an opportunity to do that.

COMMISSIONER DAFOE: Of course, this is rather an intricate and delicate question, Mr. Jones, as I suppose you know. Without expressing any opinion as to your conclusion that it might be a good time to wipe the whole question of debt allowances out, I think I would like to draw attention to the fact that a different view as to the origin of debt allowances and their purposes from that expressed here has been expressed. As for instance, in the White Report, I believe.

HON. MR. JONES: Yes, that is so.

COMMISSIONER DAFOE: Of course, Sir Thomas White who was head of that Commission was minister of finance at Ottawa at a time when he put through a debt allowance adjustment. There was a very extensive debate in that year, I think it was 1912, so he was rather familiar with the whole history of the question.

Let me put it this way; the statement that debt allowances were based upon purchased assets in the province, is only partially correct. The Dominion took over all the debts, the Dominion paid all the debts of the provinces, and the Dominion received some assets. In the transfer to the Dominion of these properties which





are set forth in the schedule C of the British North America Act, of course, some of the assets remained with the province, some of the things were not transferred in the debt allowance. The original debt allowances were based upon the theory of the Dominion taking over the provincial debts of all on a per capita assessment basis of the debts of the Maritime provinces. Then, there were adjustments and there was either<sup>a</sup> credit to a province or a debit as the case might be. I was just pointing out that among the assets which the Dominion got from the Maritimes there were some, which, at the moment, were profitable, although, in a limited sense, the railways of the Maritime provinces, according to Tilley's statement at the Quebec Conference were paying one half per cent, the White Commission points out that there were provisions to be made which looked forward to possible losses on those railways. So, I just draw attention to the findings of the White Commission which, I think, are very accurate statements on that question.

HON. MR. JONES: At what page is that?

MR. STEWART: It is contained on pages twelve to fifteen of the White Commission's Report.

HON. MR. JONES: Well, I have not anything further to suggest.

COMMISSIONER DAFOE: I was just drawing attention to this in the White Report because it gives a different statement to which attention might be properly directed.

MR. STEWART: The White Commission says, in effect, at the middle of page 14:

"It is to be noted also that the railways taken over from the Maritime provinces by the Dominion were not, in the financial or commercial sense, profitable undertakings, but involved provision to meet continuous deficits in operation



"of which the Maritime provinces were henceforth relieved."

HON. MR. JONES: I remember that clause.

MR. STEWART: At the bottom of page 14 of the report, the White Commission says:

"We agree, however, that with the Duncan Commission that consideration should be given to the claim of the Maritime provinces in respect of railways taken over by the Dominion from the provinces at Confederation." Even if those railways should be considered local in character and not, in their operation, of general benefit to the new Dominion, the fact is that the Dominion did acquire them and there must have been some reason deemed in the general interest of the Dominion for doing so."

It is clear from the White Commission Report that it made allowance to the province in respect of the same claim which is being made in your brief, would it not?

HON. MR. JONES: For which claim?

MR. STEWART: The White Commission made an allowance---

HON. MR. JONES: To which claim are you referring?

MR. STEWART: The claim in respect of the debt allowance.

HON. MR. JONES: Oh, the debt allowance; it may be quite possible. We are not very much concerned about debt allowances. I mean to say, about any change in debt allowances.

THE ACTING CHAIRMAN: You end the reference in the brief by saying this:

"We submit that the debt allowance has outlived its intent, that the title is a misnomer and a cause of ill-feeling and should be abandoned and



"the payments incorporated in the readjusted grants to the provinces."

HON. MR. JONES: That would be the principle of debt allowances.

MR. STEWART: It had outlived its usefulness with the maturity of the last of the bonds representing the provincial debt, that is your point, I would take it?

HON. MR. JONES: That, I think, would cover it, yes. Then, in respect of the public lands, unless there are some questions, we will let that stand as it is.

MR. STEWART: That question is dealt with by the White Commission at pages 15 to 17 of its report.

HON. MR. JONES: Yes. I know that. We will let the two statements stand for the use of the Commission.

THE ACTING CHAIRMAN: Yes, you seem to leave everything up to us. You leave everything in the hands of the Commission, so we have the burden.

HON. MR. JONES: In fact, we are leaving everything to the Commission. The next subject is the fish canning industry and that is a subject about which some people are anxious to speak. I am not sure whether the gentlemen are here or not, so I would like to leave that matter for the present.

On the matter of freight rates, I thought of allowing that to stand as stated in here, unless there is some explanation asked for, because Mr. Mathewson has a very comprehensive brief on freight rates for the transportation commission. I think we could identify ourselves with it, if they will permit us to do that, and I think they will. Mr. Matthewson, no doubt, will be here in support of the brief.

THE ACTING CHAIRMAN: So, you will take this matter up only after having heard Mr. Matthewson?





HON. MR. JONES: That might possible be so, but I am not asking that Mr. Matthewson be heard before we are finished.

THE ACTING CHAIRMAN: So, you are allowing the questions of debt allowance and public lands to stand and we are awaiting the freight rates question. The freight rates, we may go back to. Then, that will bring us to the fish canning industry, and we can proceed with that now, can we?

HON. MR. JONES: No, not at the moment, I would prefer to have that at a later date. I would like to see the parties interested again before taking it up.

MR. STEWART: There is just one question in connection with the freight rates. On page 57 you suggest that an allowance should be made to the province for the loss occasioned by the reasoned of increased rates, between 1912 and 1927 and the failure to provide for a reduction of rates generally. Why the suggestion that it should be paid to the province, Mr. Jones? It would be the shippers within the province who sustained the burden, would it not?

HON. MR. JONES: I quite understand, but the province must act on behalf of the shippers. It would be like the fisheries award, the province would get the money and it would be a trust fund. The province would have to distribute it to the proper parties if the province could locate them.

The item of freight rates, I might want to refer to, later on, and the same will be true of the canning industry. In reference to the position of the Dominion, the Commission will note what a generous offer we are making there to help the Dominion finances, so I do not think I need take the trouble to read that.



MR. STEWART: I suppose you would even take it in bonds which had a market price somewhat over par?

HON. MR. JONES: We would allow a premium on those. This brings us to part two of the brief, and I would prefer not commencing that until after the lunch hour.

THE ACTING CHAIRMAN: We will adjourn now, and give you all the help we can. We will sit this afternoon from 2.30 until five o'clock.



AFTERNOON SESSION

The Commission resumed at 2.30 p.m.

HON. MR. JONES: Mr. Chairman, and Gentlemen, with your permission I will read the brief through and any questions that may suggest themselves to you or Mr. Stewart can be answered afterwards.

THE ACTING CHAIRMAN: I have the understanding from Mr. Stewart to that effect, Mr. Jones.

HON. MR. JONES: There is just one observation I desire to make before beginning to read, and it is this: The determination respecting our claim under this part does not necessarily involve consideration of the status of the Dominion or of the Constitutional relationship between the Dominion and the provinces; it is simply that the Dominion should carry out the intention of the provinces that originally entered into Confederation in reference to certain matters which the provinces agreed should be carried out, and in respect of which the Dominion has recognized its responsibility. That is, we think it would not involve any thing further than that, but we have to go into the matter fully in order to show that there was such an agreement or understanding. The matter is, therefore, within a narrow compass if we are right in that. I will begin to read at page 74.

"THE CONFEDERATION AGREEMENT

In addition to the submissions made in Part 1 the Province of New Brunswick presents a special claim against the Dominion in respect of the agreement upon which the Confederation was founded.

CONDITIONS IN UPPER AND LOWER CANADA

Before Confederation the situation in Upper and Lower Canada was critical.





"We refer to the remarks of Sir E.P. Tache, Premier, Receiver General and Minister of Militia in the Government of Canada, reported in the Debates of the Legislature of Canada, 1865, at page 6:

'He would, then, first address himself to what he considered the intrinsic merits of the scheme of Confederation, and he would, therefore, say that if we were anxious to continue our connection with the British Empire, and to preserve intact our institutions, our laws, and even our remembrance of the past, we must sustain the measure. If the opportunity which now presented itself were allowed to pass by unimproved, whether we would or would not, we would be forced into the American Union by violence, and if not by violence, would be placed upon an inclined plane which would carry us there insensibly. In either case the result would be the same. In our present condition we would not long continue to exist as a British colony.'

I understand you gentlemen have read the other quotations which are given there, so that it would not seem to be necessary to read them.

"From the above it is quite apparent that the statesmen of Upper and Lower Canada were vitally concerned and were anxiously looking forward to some solution of their troubles.

#### CONDITIONS IN NEW BRUNSWICK

New Brunswick was in a quite different position. It was regarded as the wealthiest section of British North America. There was no racial controversy. The economic situation was satisfactory. The relations with the other provinces were amicable.



"It had relatively large manufacturing and commercial organizations. Banking houses, financial institutions and insurance companies were established and were giving service in the assistance of industries. The people were contented, well-ordered and enterprising and there was no reason for New Brunswick to seek a union with Canada. That it entered the Confederation upon faith of an agreement will appear later on in this submission.

Sir John A. Macdonald, then Attorney General, West, of Canada, as reported in the Debates of the Legislature of Canada, 1865, at page 32 made statements which have a bearing upon the then situation. Speaking of the Maritime Provinces he said: -

'They will form themselves into a power, which though not so strong as if united with Canada, will, nevertheless, be a powerful and considerable community and it will be then too late for us to attempt to strengthen ourselves by this scheme, which, in the words of the resolution, 'is for the best interests, and present and future prosperity of British North America.' If we are not blind to our present position, we must see the hazardous situation in which all the great interests of Canada stand in respect to the United States.'

The number of persons employed in the manufacturing industry in New Brunswick in 1870 was 18,352 and in the Dominion 187,942 which, according to population, was relatively the same.

In 1935 the number in New Brunswick shrunk twenty-five per cent to 13,937, while the number in



"the Dominion increased three hundred and ten per cent to 582,874.

In July, 1869, according to Dun's credit rating, there were in New Brunswick four firms with a rating of \$1,000,000 or over while in Ontario there were but two of such firms. The average commercial rating in New Brunswick was substantially higher than that in Ontario and Quebec.

#### NEGOTIATIONS

In 1864 there was a meeting at Charlottetown attended by delegates from the Maritime Provinces for the purpose of discussing the expediency of a Union of these provinces.

The Government of Canada, learning of the Conference, asked permission to send a delegation to Charlottetown and representatives of that Government attended. Meetings were also held later at Halifax, Saint John and other places.

In October, 1864, at the invitation of the Governor of Canada, Lord Monck, a deputation from the Maritime Provinces met with representatives of the provinces of Canada and Newfoundland at Quebec to consider the desirability of a union of all the provinces and, if possible, of devising a scheme of union.

At that conference certain resolutions were adopted as the basis of a proposed federation.

These resolutions were submitted to the provinces interested but were not approved by Nova Scotia and New Brunswick. Newfoundland and Prince Edward Island did not again participate in the negot-





"iations.

A further attempt was made by Nova Scotia and New Brunswick to resume consideration of the question of a Maritime Union but the Government of Prince Edward Island declined to negotiate further.

In 1865 the Legislature of the united provinces of Upper and Lower Canada passed an address to the Queen, praying that a measure might be submitted to the Imperial Parliament for the purpose of uniting the colonies in one government with provisions based on the resolutions of the Quebec conference. The Imperial Government refused to consider any such measure until the provinces had reached an agreement in respect of the matter.

In 1866 the Legislature of Nova Scotia adopted the following resolution: -

'Resolved, therefore, that His Excellency the Lieutenant Governor be authorized to appoint delegates to arrange with the Imperial Government a scheme of union which will effectually assure just provision for the rights and interests of this province. Each province to have an equal voice in such delegation. Upper and Lower Canada being, for this purpose, considered as separate provinces.'

The Legislature of New Brunswick adopted a similar resolution and delegations from the provinces, except Newfoundland and Prince Edward Island, were duly appointed and met in London during the same year.

Resolutions were passed at the London Conference and constituted an agreement between the



"provinces. They were submitted to the Colonial Secretary with a request that the sanction of the Imperial Government should be sought for the union of the provinces on the principles adopted by the Conference.

The Quebec Resolutions formed the basis of discussion at the London Conference, and the agreement of Confederation was made at London.

The fact that each province was to have one vote is significant and must imply that the delegation at London had the right to decide upon the terms of Union.

The proceedings of the London Conference are set out in Pope's Confederation Documents Hitherto Unpublished (1895), pages 305-308.

The following communications were sent by Honourable John A. Macdonald to the Colonial Secretary: - "

I presume these have been read by the Commission.

THE ACTING CHAIRMAN: You might resume at page 81.

HON. MR. JONES: Yes.

"It is noted that Honourable Mr. Macdonald was chairman of this Conference and Lieutenant Colonel H. Bernard, the secretary, that the agreement was signed by these gentlemen as such and duly delivered to the Secretary of State for the Colonies. In the communication of December 4th the names of the delegates are stated and these persons were the Fathers of Confederation.

It will be observed that the provinces were represented by members of their governments. Canada by both Attorneys General, the Provincial Secretary,



"the Minister of Finance and the Postmaster General; Nova Scotia by the Attorney General, the Provincial Secretary and the Solicitor General; New Brunswick by the President of the Council, the Attorney General and the Provincial Secretary and that the resolutions were passed unanimously.

Accompanying the letter from Mr. Macdonald was the agreement contained in the London Resolutions which had been adopted by the Conference and by which in Resolution 67 it was stated: -

'The sanction of the Imperial Parliament shall be sought for the union of the provinces on the principles adopted by this Conference.'

and 69

'That a copy of these resolutions, signed by the Chairman and Secretary of the Conference, be transmitted to the Right Honourable the Secretary of State for the Colonies.'

The resolutions of the London Conference, the resolutions of the Quebec Conference and other documents were printed by the Queen's Printer in England in 1867 in a blue book, and presented to both Houses of Parliament by command of Her Majesty on the 8th of February of that year.

#### THE AGREEMENT OF CONFEDERATION

The British North America Act is conclusive as to the fact that there was a Confederation agreement. The preamble states that the provinces 'have expressed their desire to be federally united.' In Section 145 it is set out that the provinces have 'joined in a declaration' 'and have consequently agreed.'

In looking for this expression of 'desire' we





"find it in no. 3 of the London Resolutions, which provides that in framing a Constitution the Conference desired 'to follow the model of the British Constitution so far as circumstances will permit.'

This seems to be the only place where the word 'desire' is used and thus the preamble to the Act has a distinct reference to the London Resolutions.

The words 'joined in a declaration' and 'consequently agreed' were also from the Act and such words necessarily mean that there must have been some joint action, evidenced by some joint document. The London Resolutions constituted the only joint document of which any record can be found in which there is a joint declaration. The London agreement was a joint declaration. The words of this enactment follow the wording of the London Resolution no. 65.

The Dominion Parliament has made a legislative admission to the same effect in the preamble to the Act respecting the construction of the Intercolonial Railway (1867. Ch. 13) as follows: -

'Whereas the Provinces of Canada, Nova Scotia and New Brunswick joined in a declaration that the construction of the Intercolonial Railway is essential to the consolidation of the Union of British North America, and to the assent thereto of Nova Scotia and New Brunswick; and consequently agreed that provision should be made for its immediate construction by the Government of the Dominion of Canada; and whereas in order to give effect to that agreement it was declared by the one hundred and forty-fifth section of the Imperial Act, known as 'The British



'North America Act, 1867,' that it should be the duty of the Government and Parliament of Canada, to provide for the commencement within six months after the Union of a railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia, and for the construction thereof without intermission, and the completion thereof with all practicable speed; And whereas, the Imperial Act known as 'The Canada Railway Loan Act 1867' authorizes the guarantee by the Imperial Government of the interest on a loan to be raised by Canada towards the construction of the Intercolonial Railway, connecting the Port of Riviere du Loup in the Province of Quebec, with the line of railway leading from the City of Halifax in the Province of Nova Scotia, at or near the Town of Truro, on certain conditions therein mentioned. Therefore, in fulfilment of the duty imposed on the Government and Parliament of Canada as aforesaid, and in order to the raising of the said loan, so to be guaranteed as aforesaid, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows: -'

The Boldface in the statements quoted in this Brief do not appear in the records from which the quotations are made and are inserted for the purpose of drawing particular attention to words which we desire to emphasize.

The Canada Railway Loan Act, 1867, Imperial, provides for the guarantee mentioned and stipulates that there must be an Act of the Parliament of Canada within two years after the Union providing



"to the satisfaction of one of Her Majesty's principal secretaries of State as follows: -

- (1) 'For the construction of the railway;
- (2) For the use of the railway at all times for Her Majesty's military and other services.'

This Act had direct regard for the London Resolutions as it was in these resolutions, and in them alone, that mention was made of the Imperial guarantee for the construction of the railway which is referred to in the above enactment. The question of guarantee is not mentioned in the British North America Act nor in the Quebec Resolutions.

This Imperial Act is referable distinctly to the London agreement and to that agreement alone. It was passed to fulfil a pledge that is mentioned in Resolution 65 of the London agreement and the pledge was the consideration upon which the provinces relied when they undertook that the railway should be constructed.

The Right Honourable Charles Adderley, the Under Secretary for the Colonies, who had charge of the Bill for the Confederation of the Provinces in the House of Commons, stated in the Debate (Hansard's Parliamentary Debates, 3rd Series CLXXXV (1867) at page 1168).

'There is, I believe, only one other clause to which I need now allude, and that is a clause by which these provinces bind themselves immediately to proceed to the construction of a great international railway, which they regard as the backbone of the general scheme of union. There is nothing in this Bill which implicates this House or this country in





"that undertaking; but it is only right, I should add that the adoption of that provision will render it necessary for me to ask the House to guarantee the interest of a loan by means of which the railway is to be constructed."

Mr. Aytoun, Member of Parliament, in the same Debate - page 1180, is reported to have said: -

"That clause provided that it should be the duty of the Canadian and other local parliaments to construct a railway from Halifax to Quebec; and if the House assented to that provision they would be bound in honour to give the Imperial guarantee to the loan which was to be raised for the purpose, upon the promise of which it was that the delegates from the Colonies had undertaken the construction of this line."

So that they necessarily went back to the agreement, which is the agreement we are putting forward.

"It will be seen from the above quotations that the Imperial Parliament recognized that there was an agreement and identified the London Resolutions containing the agreement.

The Earl of Carnarvon, Colonial Secretary, in introducing the Bill in the House of Lords, reported in 'Hansard's Parliamentary Debates, Third Series, Vol. CLXXXV. 5th February, 1867 to 15th March, 1867' at page 558 said: -

'The Conference of Charlottetown was adjourned to Quebec, and there, in the month of October, these resolutions were drawn up which have since become famous under the name of 'The Quebec Resolutions,' and which, with some slight changes, form the basis



"of the measure that I have now the honour to submit to Parliament. To these resolutions all the British Provinces in North America were, as I have said consenting parties, and the measure founded upon them must be accepted as a treaty of union.'

At Page 560: -

'These are conditions difficult under the most favourable circumstances to secure; but they are complicated in this instance by a third, which has been made a fundamental principle of the measure by the several contracting parties, and the object of which is to provide for a permanent representation and protection of sectional interests.'

At page 567: -

'In the same category must be placed the 145th clause, which makes it the duty of the Central Parliament and Government to provide for the commencement of the Intercolonial Railway within six months of the union. Such an undertaking was part of the Compact between the several provinces, and it was an indispensable condition on the part of New Brunswick.'

At page 568: -

'And first, it has been urged that this Union should have been a legislative rather than a federal one. I admit to a certain extent, the validity of the objection. When Upper and Lower Canada were connected in a legislative Union, Lord Durham distinctly contemplated a similar incorporation of the Maritime Provinces. Nor are there wanting to this opinion many of the ablest of Canadian statesmen. But the



'closest scrutiny, and in fact each of them represented a compromise between the different interests involved. Nothing could be more fatal to the Bill than that any of these clauses, which were the result of a compromise, should be subject to much alteration. Of course, there might be alterations where they were not material, and did not go to the essence of the measure, and he should be quite ready to consider any amendments that might be proposed by the noble Lord in Committee. But it would be his duty to resist the alteration of anything which was in the nature of a compromise, and which, if carried, would be fatal to the measure.'

Therefore it is conclusive that there was an agreement of some kind and that the Parliament of Canada had knowledge of it when the Dominion passed the Act above quoted."

I would like to read into the record a few additional remarks.

"The whole scheme of Confederation was not set out in the B.N.A. Act. There were some further conditions which had been agreed to at the London Conference which were absolutely necessary to be fulfilled before the scheme was complete.

Therefore, in order to ascertain what the scheme was, it is necessary to refer to the London Resolutions.

These Resolutions (by nos. 65 and 66) provide that in the construction of the Intercolonial Railway, which the provinces therein agreed should be built by the Dominion, there was to be a guarantee of £3,000,000 sterling pledged by the Imperial Govern-





"ment and a provision that the guarantee should be applied to the railway. It is impossible to conceive that the provinces were willing to undertake this construction and agree that the Dominion would finance the whole scheme out of its own resources. The pledge mentioned in Resolution 65 was a distinct part of the Confederation agreement. The agreement would have been ineffective without it. The Act of B.N.A. was passed on the 29th of March, 1867. There was no provision in that Act for the guarantee mentioned and there was no mention of the pledge having been given. So that if the Act stood alone it would certainly not have provided the whole scheme of Confederation.

This is amply shown by the remarks of Mr. Adderley and Mr. Aytoun quoted on page 84.

It is also shown conclusively by the Imperial Canada Railway Loan Act, passed on the 12th day of April, 1867, providing for the above mentioned guarantee and containing a condition that the Dominion Parliament must enact legislation respecting the construction of the railway and the application of the guarantee thereto.

It is also conclusively shown by the Act of the Dominion Parliament 'respecting the Intercolonial Railway' passed on the 21st of December, 1867, Then in the brief, at page 82: by which it was provided that the railway should be constructed and that the guarantee should be applied to that purpose.

Thus it was that both the Imperial Parliament and the Dominion Parliament, by legislation, recognized the London Resolutions. In these Resolutions



"and in them alone was there any mention of the guarantee pledged for that work. It was not mentioned in the Quebec Resolutions.

Resolutions 65 and 66 must be read together and where 65 has been so recognized, 66 must also be recognized as a part of the general scheme. The railway was to be constructed and the improvements required for the development of the trade between the Great West and the Seaboard were to be prosecuted by the Dominion as soon as the finances would permit.

The railway itself would be ineffective in accomplishing the most important purpose of Confederation, so far as New Brunswick was concerned, unless it involved also the improvements required for the development of the trade.

The Dominion was the only possible authority that could develop the trade because it was to operate the railway at all times as provided by the Imperial Railway Act. It also had jurisdiction over trade and commerce, railways, public harbours and shipping.

It cannot be questioned that A. B. and C. could enter into an agreement, binding upon them, that they would have a company incorporated with powers to perform certain services for them. The incorporation of the company would not defeat the agreement. That is exactly the situation here. The provinces entered into an agreement providing for the incorporation of the Dominion with certain powers to perform certain functions. The act of incorporation did not defeat the agreement between the provinces. That still stands. Under the agreement the Dominion,



Then, to take up the brief again at page 86, speaking of the decision of the Privy Council in the Aerial Navigation case:

"Inasmuch as the Act embodies a compromise under which the original Provinces agreed to federate, it is important to keep in mind that the preservation of the rights of minorities was a condition on which such minorities entered into the federation and the foundation upon which the whole structure was subsequently erected. The process of interpretation as the years go on ought not to be allowed to dim or to whittle down the provisions of the original contract upon which the federation was founded, nor is it legitimate that any judicial construction of the provisions of ss. 91 and 92 should impose a new and different contract upon the federating bodies."

In the Weekly Rest, Minimum Wage and Hours of Work reference (1937) E. D.L.R. at page 682, Lord Atkin in delivering the judgment of the Committee said: -

'The distribution is based on classes of subjects; and as a treaty deals with a particular class of subjects, so will the legislative power of performing it be ascertained. No one can doubt that this distribution is one of the most essential conditions, probably the most essential condition in the Interprovincial compact to which the British North America Act gives effect.'

And at page 684: -





'While the Ship of State now sails on larger ventures and into foreign waters, she still retains the watertight compartments which are an essential part of her original structure.'

In the Maritime Bank Case (1892) A.C. at page 441, Lord Watson, delivering the judgment said: -

'Their Lordships do not think it necessary to examine in minute detail the Provisions of the Act of 1867 which nowhere professed to curtail in any respect the rights and privileges of the Crown, or to disturb the relations then subsisting between the Sovereign and the Provinces. The object of the Act was neither to weld the Provinces into one, nor to subordinate Provincial Governments to a central authority, but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy. That object was accomplished by distributing between the Dominion and the Provinces, all powers, executive and legislative and all public property and revenues, which had previously belonged to the Provinces. So that the Dominion Government should be vested with such of these powers, properties and revenues, as were necessary for the due performance of its constituted functions and that the remainder should be retained by the Province for the purpose of Provincial Government.'



And at page 442: -

'It is clear, therefore, that the Provincial Legislature of New Brunswick does not occupy the subordinate position which was ascribed to it in the argument of the appellant. It derives no authority from the Government of Canada and its status is in no way analogous to that of a Municipal Institution, which is an authority constituted for the purpose of local administration.'

In the Great West Saddlery Company, against the King (1911) 2 A.C. at page 100, Lord Haldane, in delivering the opinion of the Committee said: -

'Within the spheres allotted to them by the Act, the Dominion and the Provinces are rendered, on general principle, co-ordinate Governments. As a consequence, where one has legislative power the other has not, speaking broadly, the capacity to pass laws which will interfere with its exercise.'

Speaking in Montreal in 1883 Lord Carnarvon said: -

'The British North America Act is not to be construed merely as a Municipal Act but should be viewed as a treaty of alliance requiring sobriety of judgment and plain common sense to interpret it.'

The British North America Act states in the preamble: -

'Whereas the provinces of Canada, Nova Scotia and New Brunswick, have expressed their desire to be federally united.'

The meaning of the word 'federal' is, as found in Webster's International Dictionary, 'of or pertaining to a compact, league or treaty'.



I think with your permission, Mr. Chairman, I will sit down.

"When the issue was submitted to London with reference to the Merchant's Shipping Act, the Duke of Buckingham, Chandos, Secretary of State for the Colonies, advised Viscount Monck, then Governor-General of Canada, on March 12th, 1868: -"

Would you gentlemen desire me to read those quotations?

THE ACTING CHAIRMAN: We will certainly read them if you do not. You can trust us to read them.

HON. MR. JONES: Just now you would not require them to be read?

THE ACTING CHAIRMAN: No.

HON. MR. JONES: Because they are there. Then on page 89, to save time, I might consider that read, and continuing in the first paragraph on page 90: -

"The Dominion had imposed upon it the obligation of constructing the Intercolonial Railway and of applying thereto the Imperial Guarantee for £3,000,000 sterling which had been pledged for the work, of operating the railway as a service and of providing the improvements required for the development of the trade of the Great West with the Seaboard, which improvements were to be prosecuted at the earliest possible period that the state of the finances would permit.

That it was necessary for the Dominion to have assumed the responsibilities as to the above and that the provinces, when Confederation was consummated, were no longer charged with that responsibility or capable of carrying out the terms of that agreement is abundantly clear. The Dominion, accepting as it did the Imperial guarantee necessarily became a party to the





Confederation compact. It thereby, under the Imperial Canada Railway Loan Act, agreed to operate the railway "at all times" as it must preserve the railway in proper operating condition in order that it could be used for Her Majesty's military and other services.

Therefore it became at once impossible for the provinces to carry out the terms of the agreement because the provinces had not the duty of operating the railway and could not, for that reason, develop the trade between the Great West and the Seaboard. The Dominion was given charge by the British North America Act of the regulation of trade and commerce, of public harbours and shipping.

The Great West at that time included Ontario and the territory west of Ontario. The only seaboard was the seaboard in the Maritime Provinces. There was no seaboard at Montreal. It was afterwards created as an artificial port. The improvements for the development of the trade must necessarily involve freight rates which would make it reasonably possible to develop the trade, and the creation of port facilities and shipping connections and ocean rates in order that shipments might not be congested but could be moved outwards and inwards at the seaboard during all seasons of the year. There could be no proper trade development at summer ports only", or I might say at winter ports.

"That the above is the construction which all the parties then placed upon the contract is shown by the pronouncements which had been made by members of the Government of Upper and Lower



Canada prior to Confederation and by the conduct of the parties to the agreement after Confederation. The Dominion did construct the Intercolonial Railway and provide for a long period a scale of freight rates, not based upon commercial considerations, but which could only be attributable to the contract for the development of the trade above mentioned. The Dominion also, from time to time, made certain attempts toward establishment of port facilities and made certain gestures evidencing an intention to carry out the terms of the contract. These gestures were made in part by means of statutes, enacted by Parliament respecting the ports at St. John and Halifax, providing for commissions with the apparent object of creating the necessary port facilities in furtherance of the terms of the agreement. These gestures, although not followed up by substantial works, could only be attributable to the contract.

The Maritime Freight Rates Act of 1927, hereinafter referred to was an apparent attempt in part to put a stop to the injustice which had been caused to the Maritime Provinces by the imposition of unwarranted freight rates on the Intercolonial. This provision was most inadequate, even when it was made, but since 1927, certain alterations were introduced in the freight rates structure, as affecting the central provinces, which practically destroyed any benefit that the Maritime Provinces might have had from the reductions in freight rates made under the Act in Interprovincial trade." The special brief to be filed by the



Transportation Committee of the Maritimes Board of Trade will amplify that condition.

"On the basis of what was put forward as being necessary, low competitive rates, so-called, were brought into effect to apply between certain points in Ontario and Quebec, and these rates operated to nullify the effect of the Freight Rates Act in respect to shipments to and from the Maritime Provinces, involving the carriage of freight over the lines subject to such rates. The railways have refused to permit the Maritime Provinces to participate in the reductions made by these competitive rates.

Apart from the construction placed upon the terms of the contract as above mentioned, it seems clear that, from the wording of the contract itself, no other meaning can be attributed except that the improvements mentioned involved, not only the building and the proper operation of the Intercolonial Railway but the construction of such port facilities and shipping connections as would move the freight from the Great West to the Seaboard and from the Seaboard to the Great West and other points.

The Maritime Provinces, by reason of the partial implementation of the terms of the agreement were, for a long time, persuaded that there was an intention on the part of the Dominion to perform its obligations and were lulled into a sense of security.

That the Dominion has not fulfilled its obligations is a matter of common knowledge.

The hundreds of millions of dollars which the Dominion has expended upon the creation of





artificial ports on the St. Lawrence River, in the development of the canals; and the acquisition of port facilities in the United States shows conclusively that soon after Confederation the finances of the Dominion would have permitted the construction of the improvements required by the contract.

It has built the railway and for a time operated it upon reasonable freight considerations but it has not made any substantial attempt to fulfill the other conditions. It has not established adequate port facilities and shipping connections at any of the ports in the Maritime Provinces to meet the conditions of the agreement of Union.

The statement by the Honourable G.H. Ferguson, then Prime Minister of Ontario to the Prime Minister of Canada dated September 10th, 1930, published in the Globe, Toronto, September 20th, 1930, is as follows : -

'When the Dominion came into existence it assumed all the obligations and the conditions that had been accepted on its behalf by its sponsors. Provinces which were subsequently attached to the Dominion were established at its instance under the provisions of the B.N.A. Act, and occupied the same relations towards the federated authority.'

It has been suggested that the provinces had no authority to make treaties; that the delegates to the London Conference were not authorized to make an agreement and that the people of the provinces should have been consulted.



The agreement was not a treaty, although in some of the speeches hereinafter quoted it was described as being in the nature of a treaty. The Imperial Act/<sup>itself</sup> is conclusive that the several provinces had authority to make the contract when it says that the provinces had agreed. The provinces could not have agreed unless the power was there and it is not open to the Dominion now to question the truth of the statements made in the statute by which the Dominion was created.

The same answer applies to the question as to whether or not the delegates to London were authorized to make the agreement.

The objection that the people should have been consulted is well answered by Lord Monck". I think, with your permission, Mr. Chairman, I will eliminate the reading of that long reference and also that of Lord Carnarvon on Page 94.

Beginning at page 95: -

"THE TERMS OF THE AGREEMENT. The particular portions of the contract of Confederation most material to the consideration of our submission are as follows: -

Resolution No.65.

'The construction of the Intercolonial Railway being essential to the consolidation of the Union of British North America, and to the assent of the Maritime Provinces thereto, it is agreed that provision be made for its immediate construction by the General Government, and that the Imperial guarantee for £3,000,000 sterling pledged for this work be applied thereto, as soon as the necessary authority has been obtained from the Imperial Parliament.'



No. 66.

'The communication with the North-Western Territory, and the improvements required for the development of the trade of the great west with the Seaboard, are regarded by this Conference as subjects of the highest importance to the Confederation, and shall be prosecuted at the earliest possible period that the state of the finances will permit.'

No. 67.

'The sanction of the Imperial Parliament shall be sought for the Union of the Provinces on the principles adopted by this Conference.'

No. 68.

'That Her Majesty the Queen be solicited to determine the rank and name of the Confederation;'

No. 69.

'That a copy of these resolutions, signed by the Chairman and Secretary of the Conference, be transmitted to the Right Honourable the Secretary of State for the Colonies.'

We submit that the terms of these Resolutions are sufficiently clear in themselves and that the improvements contemplated involved inter alia the establishment of harbour facilities and shipping connections at the ports of the Maritime Provinces and proper operation of the railway. The meaning will be abundantly plain when we take into account the pronouncements which were made by members of the Government of Canada prior to Confederation.

Sir E.P. Tache, Premier, Receiver General and Minister of Militia, in the Debates of the Legislature of Canada, 1865, as reported on page 6,





said:" I might just read the bold type:

'We laboured under a drawback or disadvantage which would effectually prevent that, and he would defy anyone to take a map of the world and point to any great nation which had not sea-ports of its own open at all times of the year. Canada did not possess those advantages, but was shut up in a prison, as it were, for five months of the year in fields of ice, which all the steam engineering apparatus of human ingenuity could not overcome, and so long as this state of things continued, we must consent to be a small people, who could at any moment be assailed and invaded by a people better situated in that respect than we were.'

At page 7: -

'For his part he held that the time had now arrived when we should establish a Union with the Great Gulf Provinces. He called them great advisably, for they had within themselves many of the elements which went to constitute greatness, and of some of which we were destitute. Canada was unquestionably wanting in several of these important elements.'

Nothing further should be required in order to indicate the intention of the framers of the Confederation agreement. The words in boldface imply conclusively that it was the intention to create national sea-ports in the Maritime Provinces open at all times of the year. It is noted that they were to be the ports of the nation.

The Honourable John A. Macdonald, then Attorney-General, West, of Canada, at page 18 of the Report



of 1865, said:

'As regarded the Intercolonial Railroad the resolutions showed precisely what was the intention of the Government in that matter. The railroad was not, as stated by the Honourable Mr. Holton, a portion of the Constitution, but was one of the conditions on which the Lower Provinces agreed to enter into the constitutional agreement with us.'

The resolution showed precisely the intention in respect of the railway. Both the resolutions adopted at Quebec and those adopted in the London Agreement show the intention. Mr. Macdonald said that the construction of the railroad was one of the conditions. This implies that there were other conditions.

We have a right to presume that there will be no objection urged on behalf of the Dominion or any province against the full and complete implementation of the real agreement at Confederation when once the intention of those who made the agreement has been ascertained.

The Honourable George E. Cartier, Attorney-General East and one of the delegates to the London Conference said at page 55: -

'He had stated before audiences in the Lower Provinces that, as far as territory, population and wealth were concerned, Canada was stronger than any of the other Provinces, but at the same time was wanting in one element necessary to national greatness - the Maritime one; and that, owing to the large trade and commerce of Canada extensive communication with Great Britain at all seasons was absolutely necessary.'



I will pass over the rest of that page. Coming to page 98 there is a continuation of his remarks: -

"Canada, having two of three elements of national greatness, territory and population, - wanted the Maritime element; and he had said - the Lower Provinces had this element and a seaboard but not a back country or large population, which Canada possessed - and for the mutual benefit and prosperity of all the Provinces, all these elements ought to be united together.

He admits statements made in the lower provinces that Canada was wanting in one element to national greatness - the Maritime one, and that extensive communication with Great Britain at all seasons was absolutely necessary. There could not be such communication in Canada without utilizing the ports of the Maritime Provinces. They were, and are, the only ports which would afford such communication at all seasons.

The intention is so plain that it should not require argument. It is difficult to understand that New Brunswick entered the Confederation except upon an absolute reliance on the Confederation agreement, that its ports would be made to serve the commerce of Canada as national ports. No doubt our people had the vision of a great prosperity to be brought about by the shipment of the products of the Great West wholly through British territory, the import trade of Canada, the interprovincial trade; the establishment of industries which would result from the Confederation of the provinces. But one of the strongest statements was made by the Honourable A.T. Galt, Minister of Finance, and one of the delegates to London,





when he said at page 63: -

'We may well look forward to our future with hopeful anticipation of seeing the realization not merely of what we have hitherto thought would be the commerce of Canada, great as that might become, but to the possession of Atlantic ports, which we shall help to build to a position equal to that of the chief cities of the American Union.'

And on page 65: -

'Through these canals and the River St. Lawrence and along the railway systems of all the provinces, when hereafter connected, a great trade will flow in one uninterrupted stream, enriching in its course not only the cities of Canada, but also swelling the tide of a new commerce we may hope to see called into being in the open Atlantic ports of Saint John and Halifax.'

The Honourable George Brown, President of the Executive Council, at page 103: - "Coming down to the last part of what he said: -

'The communications with the North West Territory, and the improvements required for the development of the trade of the Great West with the Seaboard, are regarded by this Conference as subjects of the highest importance to the federated provinces, and shall be prosecuted at the earliest possible period that the state of the finances will permit'". That is exactly following the wording of No. 66.

"The Confederation is, therefore, clearly committed to the carrying out of both these enterprises. I doubt if there was a member of the Conference who did not consider that the



opening up of the North West and the improvement of our canal system were not as clearly for the advantage of the Lower Provinces as for the interests of Upper Canada.'

'--- Honourable Gentlemen opposite must not imagine that they have to do with a set of tricksters in the thirty-three gentlemen who composed that conference.'

'What we have said in our resolutions was deliberately adopted in the honest sense of the words employed and not for the purposes of deception. Both works are to go on at the earliest possible moment our finances will permit', - just the very words used, - 'And Honourable Gentlemen will find the members of the Cabinet from Lower as well as from Upper Canada, actuated by the hearty desire to have this whole scheme carried out in its fair meaning.'

At page 107: -

'I am in favour of this union because it will give us a seaboard at all seasons of the year.'

And at page 108: -

'The advantage it will confer on the Maritime Provinces can hardly be over-rated. It will make Halifax and Saint John the Atlantic seaports of half a continent; it will insure to Halifax, ere long, the establishment of a line of powerful steamers running in six days from her wharves to some near point on the West coast of Ireland - and it will bring a constant stream of passengers and immigrants through those Lower Provinces that never otherwise would come near them.'



Messrs. Macdonald, Cartier and Galt afterwards became members of the Dominion Cabinet and Sir John A. Macdonald practically controlled Parliament from Confederation up to the time of his death in 1891, except during the years 1873 to 1878.

Although the Dominion recognized its responsibility in respect to the agreement of Confederation by legislation, by the statements in Parliament made from time to time by responsible Ministers of the Crown and by legislative enactments with respect to the Intercolonial Railway, the ports of the Maritime Provinces and the carriage of export commodities over Canadian railways, as hereinafter more particularly described, it seemed gradually to lose sight of the principles upon which Confederation was established.

The Provinces, being sovereign and independent nations under the British Crown, jointly and unanimously arranged with the Imperial Government to provide an agency by means of which certain matters of common interest were to be dealt with. The agency was created by the provinces and the provinces were not created by the agency. The provinces remained sovereign nations and the British North America Act did not effect any change in their status. They are still independent sovereignties and the Dominion is still the agency through which certain matters are administered. This has been more particularly demonstrated by the decisions of the Judicial Committee of the Privy Council.

The Dominion Parliament has declared by legislative enactment that there were 'obligations' undertaken





at Confederation; that once the true intention of those provinces which entered into the Union was ascertained, the intention should be carried out; that the Dominion was the proper authority to carry it out; and that in the discovery of such intention a Commission should be governed, amongst other things, by a study of the events and pronouncements prior to Confederation and at its consummation, and the obligations undertaken by the several parties.

This legislative declaration is contained in the preamble to the Maritime Freight Rates Act of 1926-1927, Chapter 44, which is as follows: -

'WHEREAS the Royal Commission on Maritime claims by its report, dated September 23rd, 1926, has, in effect, advised that a balanced study of the events and pronouncements prior to Confederation, and at its consummation, and of the lower level of rates which prevailed on the Intercolonial system prior to 1912, has in its opinion, confirmed the representations submitted to the Commission on behalf of the Maritime Provinces, namely that the Intercolonial Railway was designed, among other things, to give to Canada in times of national and imperial need, an outlet and inlet on the Atlantic Ocean, and to afford to Maritime merchants, traders and manufacturers the larger market of the whole Canadian people instead of the restricted market of the Maritimes themselves, also, that strategic considerations determined a longer route than was actually necessary, and therefore that to the extent that commercial considerations were subordinated to national, imperial and



strategic conditions the cost of the railway should be borne by the Dominion, and not by the traffic which might pass over the line; and whereas the Commission has, in such report, made certain recommendations respecting transportation and freight rates, for the purpose of removing a burden imposed upon the trade and commerce of such provinces since 1912, which, the Commission finds, in view of the pronouncements and obligations undertaken at Confederation, it was never intended such commerce should bear; and whereas it is expedient that effect should be given to such recommendations, insofar as it is reasonably possible so to do without disturbing unduly the general rate structure in Canada.'

In the Act itself it is stated that the preamble indicated the purpose and scope of the statute.

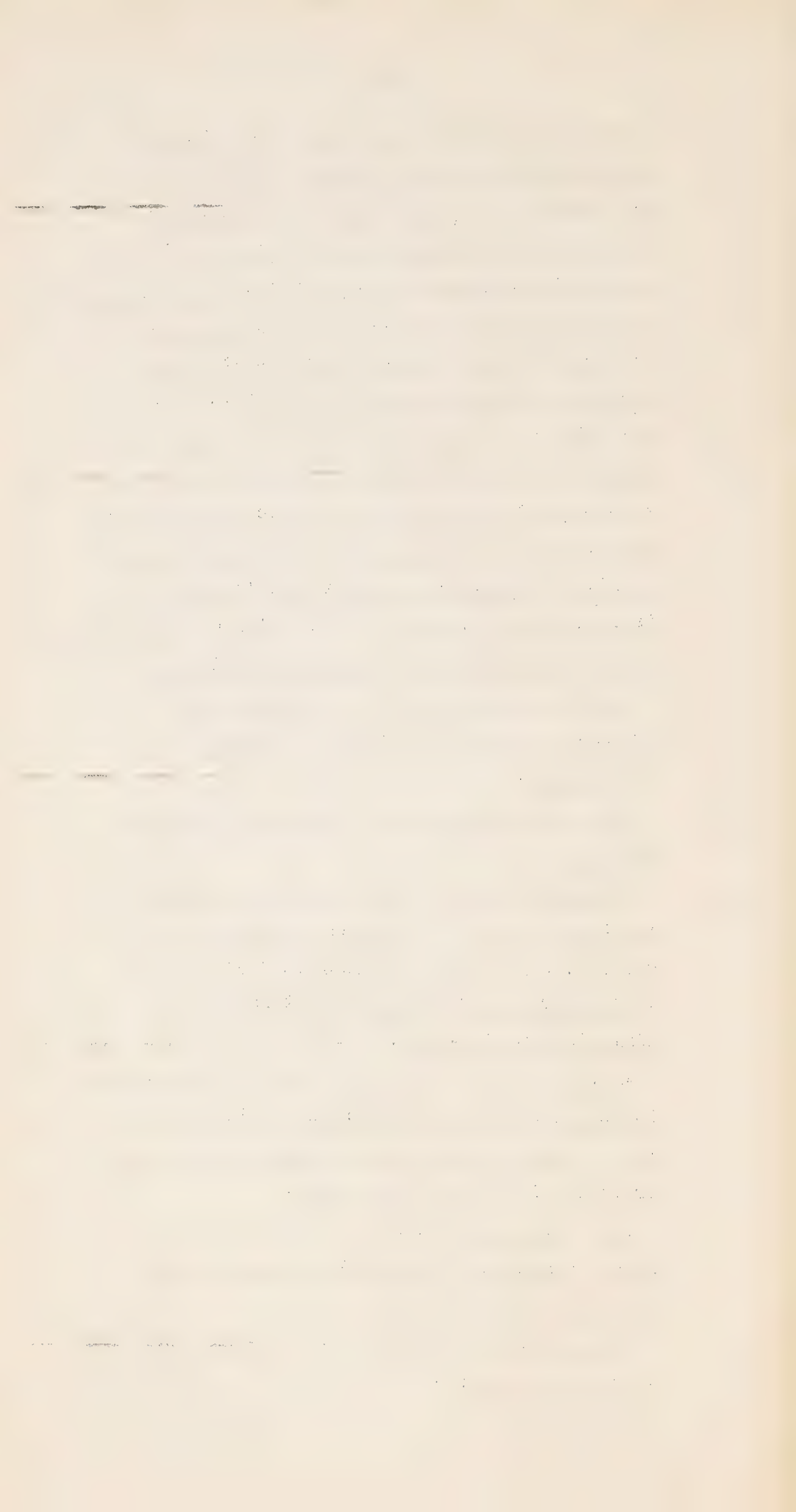
The above enactment is conclusive against the Dominion.

It was not merely a statement by a Minister of the Crown or even a pronouncement by Order-in-Council, but it was a deliberate declaration by the Parliament of Canada that involved an admission of liability.

In view of that solemn and formal acknowledgement it is not open now to the Dominion to say that it is not bound to carry out the intention of the provinces in entering the Union.

That the question was not dealt with by the Duncan Commission or by the White Commission is indicated by the record.

At page 23 of the report of the Duncan Commission is the following: -



'Considerations such as attach only to individual claims, or to the general question as to whether or not railway companies should give better treatment than they are giving to long-distance traffic, particularly on natural products and associated enterprise, and to export and import rates from and to points outside the Maritime area passing through Atlantic ports, are still open for review by the Railway Commission.'

The Duncan Commission did deal with the question of freight rates on the Intercolonial Railway. It recommended a reduction of 20% in order that the general set-up would be in line with the freight structure in the rest of the Dominion, but it made no attempt to deal with the conditions surrounding the development of the trade between the Great West and the Seaboard or other features of the Confederation Compact.

As to these matters the reference in the report is contained at page 28 as follows : -

'Very considerable evidence was laid before us on behalf of the Maritime Provinces, to show that in the public pronouncements of responsible Ministers over a long period of time, and indeed in the statutory obligations under which railway companies operate, there is to be found the most explicit pledge that Canadian trade will be developed through Canadian ports, and yet, in spite of that pledge, ports such as Halifax and Saint John are, it is stated, not being fully utilized. This is a subject on which, in its more general aspects, we are not called





upon to form a view, or express an opinion, especially since the Terms of Reference made to the Board of Railway Commissioners under Order-in Council dated January 7, 1926, they are specifically required to inquire into the causes of Canadian grain and other products being routed or diverted to other than Canadian ports and to take such effective action under the Railway Act, 1919, as the Board may deem necessary to ensure, as far as possible, the routing of Canadian grain and other products through Canadian ports.<sup>1</sup>

( Page 8840 follows )



"It will be quite apparent from the above quotations that the question we are now advancing, that is to say, the nonfulfillment by the Dominion of the provision in the agreement of Confederation providing that 'the improvements required for the development of the trade between the Great West and the Seaboard shall be prosecuted at the earliest period that the finances will permit', was not considered or decided by the Duncan Commission. That Commission said that it was not quite open to express an opinion with reference to matters which are necessarily a part of the agreement above mentioned.

The Duncan Commission also made a recommendation that an interim payment of \$600,000 per year be made to New Brunswick in respect of financial arrangements between the Dominion and the Maritime provinces and said:--

'It is not possible, therefore, to make a final recommendation as to the increase and form of Dominion aid which is required to satisfy the just claims of the Maritime situation, but we recommend that the Dominion government should give immediate consideration to the whole of this subject, with a view to a complete revision of the financial arrangements as between them and the Maritime provinces.'

The authority of the White Commission was strictly circumscribed. In the Order-in-Council, after referring to the Duncan Commission there is the statement:--

'And whereas the said Commission made certain recommendations with regard to the readjustment of



"the financial arrangements between the government of the Dominion and the governments of the three Maritime provinces.'

'And Whereas in a letter dated the 16th day of January, 1934, addressed to the Prime Minister of Canada by the Premiers of the Maritime provinces it was suggested that a Commission be set up to take into consideration and deal with the recommendation of the Duncan Commission that there be a revision of the financial arrangements between the Dominion government and the Maritime provinces.'

'And Whereas pursuant to the provisions of the said the Inquiries Act, His Excellency, the Governor General in Council by Order, P.C. 2231, of the fourteenth day of September in the year of Our Lord, one thousand nine hundred and thirty-four, copy of which is hereto annexed, has authorized the appointment of Our Commissioners therein and hereinafter named to take into consideration and deal with the recommendation of the said Duncan Commission that there be a revision of the financial arrangements between the Dominion government and the Maritime provinces.'

It will be seen from the ~~above~~ that the authority of the White Commission was limited to the consideration of a revision of the financial arrangements.

The White Commission did not attempt to make any recommendations or findings in reference to the obligations contained in the Confederation agreement that 'the improvements required for the





"for the development of the trade between the Great West and the Seaboard should be prosecuted at the earliest possible period when the state of finances will permit,' or in possible period when the state of finances will permit,' or in fact in respect to any of the claims of New Brunswick, other than those involving a consideration of the financial arrangements.

This is recognized by the White Commission in its report at page 19.

After referring to the Duncan report it is stated:--

I do not think it is necessary for me to read that statement. I notice a particularly pertinent part:

--These larger and more important aspects of the subject were dealt with comprehensively by the Duncan Commission and do not expressly fall within the scope of our inquiry. We are concerned only with the matter of revision of financial arrangements. The broad economic problems of the Maritimes like those of the other provinces are for the government and parliament to consider and deal with.

Now, at the top of page 106:

"It is therefore clear that the contentions we are now making have never been considered or acted upon by another Commission and the field is still open to this province in the submission of its claims under this Part.

Our submission is that the present Commission, under its authority whereby it is required to conduct a re-examination of the economic and financial basis of Confederation is empowered to deal with the question raised by us in this Part.

It was laid down in the House of Commons by



"Sir Wilfred Laurier, in 1907, as reported in Hansard, page 5308 that there is no finality in respect of subsidies to the provinces. He said:--

'My Honourable friend (George E. Foster) knows as well as I do that there is no other guarantee but the determination of Parliament itself. Under the American constitution no amendment can be made unless it has been voted and ratified by three-fourths of the States. We have no such provision in our constitution; the only guarantee we have is the security of the Imperial Parliament, and it will always be difficult for us to go to England and get an amendment to our constitution. Forty years have now elapsed since our constitutional charter was amended. It is true that we have been doing like the Romans, who, though they had the law of the twelve tables, which could not be altered, still managed to circumvent that law by enacting other laws. We might do the same thing. But the only guarantee we have is this--that my honourable friend representing one party and myself representing another party, and the members of Parliament generally, will agree that this is to be final. Parliament will not defeat its own intentions, and Parliament can always do as it pleases, and the honourable gentleman knows that there is no other finality in all these matters but the will of the people, the will of Parliament itself.'



You, Gentlemen, are familiar with that statement.

"The Honourable W. S. Fielding, then Minister of Finance, stated on the same occasion that nothing could be done which would prevent a further grant being made from the Dominion to the provinces.

And it was in view of those declarations that the province accepted the cheques covering the amounts recommended by the Duncan and White Commissions.

As already indicated the Dominion did partially perform its obligations in respect to the building of the railway and the operation thereof up to the year 1912.

In reference to the agreement that it should be the duty of the Dominion to provide the improvements required in the development of the trade between the Green West and the Seaboard there was about the year 1876 a spur railway constructed in Saint John from a connection with the Inter-colonial Railway down along the harbour at Courtenay Bay, and a wharf built.

If you do not mind, gentlemen, I will ask my son to read for a while.

MR. G. JONES: Continuing:

"In 1882 (see Act of the Dominion of that year, ch. 51) a statute was passed with reference to the harbour of Saint John by which the Governor-in-Council of the Dominion was authorized to appoint three Commissioners, the Common Council of Saint John City and the Council of the Board of Trade one Commissioner each, and the Commissioners were to have power to purchase the





"harbour property from the city, also other wharf property. And for the extension and improvement of such harbour the Governor-in-Council was empowered to raise \$750,000 as a loan for those other improvements when sanctioned by the Minister of Public Works; and powers of expropriation were given to the Commissioners.

This statute was to come into force by proclamation. It was never brought into force and nothing was ever done under it. But it indicates that the Dominion Parliament quite realized its responsibilities in connection with the improvements to the Harbour of Saint John. The statute was repealed in 1919 (chapter 70) and it was again repealed in 1927. (Chapter 67.)

Some time about the year 1898 the Dominion made further improvements in the harbour at Saint John by constructing an elevator and continuing the spur down on the eastern side of the harbour to connect with the spur built in 1876.

In 1919 an Act was passed by Parliament (Chapter 70) in which the earlier Act was referred to, reciting that the city of Saint John had agreed to transfer its rights to His Majesty. The statute provided for the appointment of Harbour Commissioners to define the boundaries of the harbour and fixed the consideration to be paid at the sum of \$2,000,000.

The Act respecting the construction of the National Transcontinental Railway (1903, chapter 71) passed on the 24th of October, 1903, confirmed the agreement between His Majesty the King and the Grand Trunk Pacific Railway Company with



the  
 "respect to/building and operation of the National  
 Transcontinental Railway.

In this agreement by paragraphs 42, 43, and  
 45 it is provided as follows:-- "

I do not think that it is necessary to read that.

Continuing at the top of page 109:

"Similar provisions were made in legislation  
 respecting the Canadian Northern Railway.

There were repeated declarations in the  
 Dominion Parliament by Sir Wilfred Laurier and  
 Honourable Mr. Fielding that the policy of the  
 government was to have the freight routed, so  
 far as possible, through Canadian ports.

On January 7th, 1926, the Dominion government  
 passed an Order-in-Council calling on the Rail-  
 way Commissioners to enquire into the shipment  
 of Canadian freight through Canadian ports,  
 with instructions to take steps under the Railway  
 Act as might be necessary to have freight for-  
 warded through Canadian ports.

The position of New Brunswick is that some  
 recognition was paid to the obligations of the  
 compact by the Dominion government, in the  
 construction of the Intercolonial Railway and  
 the fairly reasonable operation thereof on a  
 service basis for many years: but that there was  
 no proper attempt made to fulfill other conditions  
 of the contract.

The Dominion government has recently recognized  
 the Confederation agreement by removing from the  
 indebtedness which had been allocated to the  
 Canadian National Railway that part thereof  
 incurred by the Dominion in respect to the con-  
 struction of the Intercolonial Railway. This



"item is now added to the public debt account of Canada. There was never any justification for including the item in the debt applicable to the Canadian National Railway System. This Act of the Dominion shows conclusively that the Canadian National Railways are not expected or required to impose any freight rates on the Intercolonial Railway system designed to provide the interest on the cost of construction. Our submission is that, even if the operating expenses involve freight rates which bear too heavily upon the interprovincial and other trade of the Maritime provinces, the rates should be reduced to an amount which would fairly encourage such trade and make it possible.

It may be also stated here, that, in making comparisons in respect of capital expenditures by the Dominion in the several provinces, it must be borne in mind that the cost of the Intercolonial Railway is not to be considered as chargeable in any sense as an expenditure in the Maritime provinces. The cost of the railway is an essential part of the scheme of Confederation.

It will be noted that under Resolutions 65 and 66 it was provided that the government was to furnish improvements which were required in the development of the trade between the Great West and the Seaboard and that the work of such improvements should be prosecuted as soon as the state of the finances would permit.

The whole scheme was to keep the traffic within Canada. The intercolonial was located with this object in view. The Maritime provinces had the only seaboard and it was to that sea-board that <sup>the</sup> resolutions referred.





"There could be no trade between the Great West and the Seaboard unless it involved shipment abroad and imports brought into Canada throughout the whole year.

Public harbours, the regulation of trade and commerce and shipping were passed into the jurisdiction of the Dominion.

It is therefore submitted that it was the duty of the Dominion to make improvements in harbour facilities, shipping connections and overseas freight rates so that there might be a continuous development of the trade between the Great West and the Seaboard.

This partial performance of the agreement of Confederation must be deemed a recognition by the Dominion Parliament of its obligations under the agreement, an acceptance of its terms, and a conclusive admission of the agreement as we allege it to be, and the Dominion by reason of its conduct is now estopped from setting up any objection to the construction it placed upon the agreement or its liability to perform the conditions imposed upon it.

In the report of the Duncan Commission at page 21, it is stated:--

I need not read that.

#### PROTESTS

"There have been many protests made, from time to time, by New Brunswick and by the other Maritime provinces to the Dominion in reference to the nonfulfillment of the terms of Confederation. The last protest was made on the 13th of August, <sup>1836</sup> 1836, by communication from His



"Honour the Lieutenant Governor of New Brunswick to His Excellency the Governor General of Canada, and in which was contained a copy of an Order-in-Council passed by the Government of the province and a resolution of the legislative assembly demanding fulfillment of the obligations resting upon the Dominion.

If we take a broad view of the conditions of the time, we can understand the picture that was presented to the people of the Maritime provinces. Here were provinces locked up for one-half the year without a seaboard, at the mercy of the United States for an outlet. There was internal dissension and financial problems so that some change in the political situation was imperative. They conceived the idea of a union in order to become independent of the United States. Even at that time there was every prospect of developing a tremendous grain yield in the West. The people of the Maritime provinces were persuaded that interprovincial trade would be developed and that traffic would be carried through their ports with facilities provided by the Dominion. They entered into Confederation upon that understanding.

But the Dominion, although it had operated the Intercolonial Railway until the early part of this century somewhat in accordance with the spirit of the Confederation agreement and then abandoned that spirit altogether, and did on certain occasions attempt to make improvements in order to develop the trade between the Great West and the Seaboard, did not adequately provide such improvements. It did not build up national



"harbours at Saint John and Halifax. It did not discontinue the traffic to the American ports or to try to do so. They had obtained Confederation. They could say to the United States: "We are independent now; we have a seaboard open all the year round." That seemed to satisfy the politicians. The Dominion even made investments amounting to 156 millions of dollars in railway transportation and harbour facilities in the United States and assumed an indirect liability of many millions more.

We regard this expenditure in a foreign country as entirely beyond the powers of the Dominion government.

Many millions of dollars were expended by the Dominion in order to create an artificial port at Montreal and to maintain traffic to and through other artificial ports on the St. Lawrence. Millions are being spent for the dredging of that river and in ice-breaking so that shipping can be artificially extended into the winter months at the expense of the Maritime provinces. If a reasonable development of the Maritime ports had been made as agreed there would have been some justification for development elsewhere, but when the Maritime ports were practically forgotten this province has a right to complain. These expenditures on the St. Lawrence and the expenditures on the canals, supplemented by the expenditures in the United States, indicate conclusively that money was available 'for the prosecution of the improvements required for the development of the trade from the Great West to the Seaboard.'

There is in prospect now an enormous expenditure





"estimated at \$100,000,000 in order that a channel may be maintained in the St. Lawrence River to Montreal. Through the diversion of the waters of the Great Lakes by the United States the level of the lakes has been reduced from 4 to 8 feet already and there seems to be a continuous falling drop in the level.

The Dominion has also expended some fifty millions on the Hudson Bay development which is an impossible economic proposition.

All this is in line with the attitude always adopted for the purpose, apparently, of diverting the traffic to ports other than those of the Maritime provinces.

Canada has paid the United States hundreds of millions of dollars for transportation services more than it has received from the United States. It has contributed a huge amount through New York stock exchange and other exchanges in the Republic. The trade balance against Canada with the United States has been enormous and Canada and the Empire have suffered primarily from the fact that the basic condition of Confederation has been disregarded. There has been imposed under New Brunswick transportation and cost of production handicaps which make it practically impossible for this province to develop her trade, although, with the utmost determination, the government of the province is struggling for such development in the face of almost insurmountable handicaps.

It was more particularly in 1888 that a well defined act on the part of the Dominion indicated that it was not the intention to pay regard to the substantial development of the Maritime ports.



"By chapters 5 and 6 of the Acts of the Dominion in that year provision was made for the assumption by the Dominion of the debts of the harbour commissioners of Montreal and Quebec and for the widening and deepening of the channel in Lake St. Peter and in the St. Lawrence from Montreal to Quebec.

Our complaint is that the Dominion has persistently ignored the rights of the Maritime provinces. Montreal was not, and is not now, an ocean port. The only ports at the seaboard were ports in the Maritime provinces.

It is contended by many that the grain shipments from the West are routed by the shipper and that the railways have no discretion in the matter; that even if there were a fixed policy on the part of the railways to ship the grain through Maritime ports, it would be impossible for them to divert these shipments from the channels named for those who ship grain or those who control the shipment of the grain.

It is not our intention to consider this proposition.

We rely upon the design of Confederation by which the obligation was upon the Dominion 'to make such improvements as were required in the development of the trade between the Great West and the Seaboard and to prosecute such improvements at the earliest period when the finances of the Dominion would permit. "

We do not look to the railways for the performance of this stipulation. We look to the Dominion, and we say that it was perfectly feasible



"for the Dominion to cause the substantial part of the grain to be shipped to the East through British territory to the ports of Saint John and Halifax. If this trade had been once established, as it should have been established in the early years of Confederation the question would have been solved. The shipment of the grain, the development of the ports, the provision as to shipping connections and the proper operation of the Intercolonial Railway would have brought to the Maritime provinces imports into Canada and the ports of Saint John and Halifax would have been built up the same as the ports of the leading cities of the United States.

As an example of what might have been done we refer to the present conditions where, by reason of Imperial Regulation designed to keep British trade in British trade routes throughout the Empire, British commodities enjoy a preference when shipped through British ports; such regulation has been proved to be sufficient to divert the traffic largely to such ports. But the British regulation does not recognize the inter provincial agreement which requires the Dominion to route the traffic through Maritime ports. We also refer to the provision now made that imports into Canada enjoy a preference when entering through Canadian ports. The effect of this arrangement has been, not only to cause a substantial quantity of the grain to be shipped through Canadian ports, but also to bring to such ports a largely increased amount of the imports into Canada, but ports of the Maritime provinces





"are not benefitting, relatively by these arrangements.

Whether these same arrangements could have been made in the early days of Confederation may or may not be questionable, but the example only illustrates the measures that might have been taken for the development of this trade through Maritime ports.

Some arrangements might have been made by the Dominion and it was for the Dominion to provide that such arrangements should have been made. The burden was upon the Dominion to fulfill the terms of the agreement. If, in order to do so, the railways needed encouragement or if the shippers needed concessions, it was the duty of the Dominion to provide that encouragement or such concessions.

That such an arrangement was possible is indicated by what was accomplished by the Canadian Pacific Railway Company. In 1895 that company commenced some development at the port of Saint John by which grain was to be shipped in the winter season. The Canadian Pacific Railway Company, found the grain and, to the extent of its development, caused shipments to be made through the Port of Saint John. The Dominion neglected its obligations in that particular, made no successful effort to carry out the terms of the agreement and still permitted and encouraged the American ports to handle the grain from the West in an ever increasing quantity.

As above pointed out the shipment of grain in large quantities in the early days of Confederation



"would have built up the ports of Saint John and Halifax and shipping would have been attracted to those ports for the carriage of grain and for the delivery of imports into Canada. That has not been done and it may be more difficult now to accomplish that result. But even if it were more difficult, the duty is there on the part of the Dominion. The Dominion should have assumed the financial responsibility of making provisions in some form for the carrying out of the Confederation agreement in that respect sixty years ago and when once the momentum was given to the trade the success of it would have been assured. It might cost the Dominion something to do that, but it frequently costs persons and corporations something to carry out their contracts.

What we submit is that such a condition would have been reasonably possible of accomplishment.

If the agreement of Confederation had been carried out in its entirety, not only would a great proportion of the traffic from the West be now carried through the Maritime ports but a much larger proportion of the import trade of Canada would have passed through those ports. The development of the trade, requiring not only the port facilities but also the shipping connections and ocean freight rates must necessarily have drawn to those ports in an ever increasing stream imports from abroad.

At the time of Confederation the Imperial Government was very much concerned as to the location of the Intercolonial Railway and that success would follow the union of the provinces;



"it is not unreasonable to assume that the Government would have granted every encouragement possible to the development of the traffic by and through British territory. Importers of grain in Britain could easily have been persuaded to cause the grain to be shipped through British ports and the influence of the Imperial Government in that respect would have been a great factor in the accomplishment of this result. Canadian importers might also have had much influence in directing the importation of commodities through Maritime ports.

If the development which has been artificially created on the St. Lawrence had been fairly divided with Halifax and Saint John the national benefit which would have accrued would be enormous.

The first national freight rate structure established by the Federal government provided freight rates which made it possible for our importers and shippers to compete in Ontario with Montreal importers and shippers. Plants were established in the Maritime provinces at the Seaboard for the manufacture of tropical and semi-tropical raw materials but many of these manufacturing industries were obliged to discontinue because of the constant and continuing burden placed upon the traffic from the Maritime provinces.

The present operation of the Intercolonial Railway, under the supervision of the Board of Railway Commissioners, is a commercial operation which is entirely contrary to the scheme of Confederation.

In order that the design of Confederation may





"be carried out, it is necessary that the Inter-colonial railway operation have a local management at Moncton; that such management operate under the principle of the encouragement of industry in the province and of enabling the people of New Brunswick to market their commodities in competition with those of the other provinces; to obtain from those provinces the goods which must be had for consumption.

Sir Henry ... the Commission headed by Sir Andrew Duncan, testified at Montreal on September 1st, 1927:

'Unfortunately as far as the Canadian National Railway itself is concerned there have been distinct limitations with respect to the assistance which they might provide. Whether I am right or wrong, others must say, but I have in sincerity conceived that the mandate, which I think Mr. Dalrymple touched upon as to the administration of the Canadian National Railway, was to endeavor to operate that system in such fashion as would as rapidly as possible reduce the financial burden on the people of Canada to supportable proportions, with the ultimate object in the near future of removing that burden altogether.'

'If that theory does not assure that measure of relief which the Maritime provinces should have and which I personally feel they should have, then the burden should not rest exclusively on the National Railway system but should be met by some form of assistance, presumably federal assistance, which will be in an equitable way distributed over the whole of Canada.'



" I should like to interpose at this juncture another factor which, I think, creates a responsibility which rests on the rest of the Dominion of Canada. The Maritime provinces possess the only all-round year ports on the Atlantic. I mean ports that are freely open for navigation the twelve months of the year. That, in my judgment, is an extremely important factor. It is inconceivable to my mind that the people of the rest of Canada could contemplate isolation from the Atlantic seaboard during the winter time. Now, the ports are not at the moment enjoying the traffic which their strategic importance justifies.'

'I think there can be little doubt that the people of the Maritimes, perhaps in the form of written documents, or perhaps by spoken word by responsible political leaders of that time, were assured of transportation services which in cost and character would enable them to market their products to the rest of Canada and carry on their industrial activities.'

'That is precisely my position, Sir Andrew, whether it be right or wrong, I again repeat that the responsibility of the administration of the Canadian National Railways is to try to operate all the parts of that railway in such fashion as will remove as rapidly as possible the financial burden which rests upon the people of Canada, and give to the people of Canada at the same time efficient transportation service as we can. If I am wrong, then some responsible body will correct me we will proceed on some other basis.'



"It is not impossible to draw a picture of the conditions that might have prevailed in New Brunswick had the Confederation agreement been properly carried out by the Dominion. The condition would not be far removed from that stated by the Honourable Mr. Galt when he said that the Dominion would help to build up Atlantic ports to a position equal to that of the chief cities of the American Union. If that situation had been developed the province of New Brunswick would to-day be in a very different position from what it is at present. Ports for the traffic that must have been available under these conditions would have given rise to the development of all kinds of industries in the province. There would have been a market for our farm products close at hand. Manufacturers would have been encouraged. Our population would probably have reached more than a million souls.

We would have been able to retain many of our young people who have, since Confederation, been obliged to leave the province to obtain a livelihood. The benefits would have been incalculable. The matter is not one for definite proof from figures but our submission is that this province should be compensated in such a reasonable manner as may be determined upon from all the evidence.

The opinion of Sir Andrew Duncan is important in this connection. (See report of the Duncan Commission pages 29 and 30.)

THE CHAIRMAN: Mr. Jones you might consider it as read and it will appear in the evidence.





HON. MR. JONES: Very well, thank you.

"We doubt whether it is sufficiently to what extent, in an unforeseen but inexorable way, enterprise within the three Maritime provinces has been checked as a result of their maritime development not having kept abreast of the transformation which in the last half century has been taking place in sea transport. Not only tonnage but also as regards the port requirements for handling it. Both in the nature of the basic products of the Maritime provinces, and in the advantage which their Maritime location gave them access to the world markets was in former times their greatest asset. In ownership of tonnage, and in the service that tonnage rendered to them in transportation of commodities around their own regions, as well as for their overseas markets and return trade, they had a most valuable source of income, a source of income too which helped materially to maintain the balance of trade. Access to world markets is still, in many respects, more important to them for some of their natural products--though not for all--than access to internal Canadian markets. Events outside their control may have closed to them some overseas markets which were at one time available, or may have made these markets less profitable, but initiative and enterprise can supplement old markets with new so long as sea communication is maintained abreast of the times in equipment, facilities and organization.

'It is not possible, within a short space of time, to make good the leeway which delayed attention has created. But we must not, on the other hand,



"underestimate the rapidity with which development of traffic can be expedited through the development of facilities for handling the traffic (including requisite cold storage) and through making known, by all the sources that are open to the energetic administration of harbour commissions, in the shipping exchanges of the world, and to shippers, the facilities that are offered at any given port.'

'More reiteration of such a general slogan as 'Canadian trade for Canadian ports' may stir sentiment (and we are not belittling sentiment, although its business value must not be exaggerated), but it will certainly not develop traffic beyond the point at which there are facilities to deal with the traffic and there is organization to ensure the regulation and flow of the traffic, or beyond the point at which these facilities and that organization both from the point of view of land and sea transit, can place goods in the markets of the world on a competitive basis.'

The design of Confederation involved the operation of the Intercolonial Railway by the government of Canada. The provinces were willing to entrust the Dominion with that operation. The Dominion was the only agency which could make the operation of the Intercolonial Railway a part of the general improvement which was required for the development of the trade between the Great West and the Seaboard.

For a long time the Intercolonial Railway was so operated. The Dominion had control constantly. The management was under the direct supervision of the Department of Railways and Canals.



"There was no authority in the government of Canada to relinquish that control. It was a part of the Confederation arrangement. If the provinces had entered into a legislative union the Dominion could enact laws binding upon the provinces as effectively as the provinces now can with reference to the municipalities. But this is not a legislative union. It is a Confederation. The provinces were joined in a Confederation. Each province was a unit in that structure, and independent sovereignty and not subject to the legislative jurisdiction of the Dominion Parliament.

When Parliament relinquished control of the operation of the Intercolonial Railway and passed the same over to a private corporation, it went far beyond the powers which it possessed under the constitution. The Canadian National Railway Company operates many railways and in some of these railways there are private shareholders. It is therefore incumbent upon the Canadian National Railway Company to operate all its railways commercially with a view to dividends, if the same can possibly be earned. The control is absolutely placed in the hands of this private corporation and the Dominion Government has no power to interfere with the management by that corporation. The corporation is operating that railway and other railways, not with reference to the rights of the Maritime provinces under the Confederation system, but with the object of showing results in the same way as any private corporation.

This is only another instance of the attitude





"adopted by the Dominion with reference to the rights of the Maritime provinces.

We therefore submit that a recommendation be made that the Dominion forthwith provide a schedule of freight rates based upon what was designed at Confederation and not upon exclusively commercial considerations; that the jurisdiction over rates on the Intercolonial Railway be removed from the control of the Railway Commission; that there should be a subsidiary management of the Government Railways in New Brunswick established at Moncton, authorized and instructed to carry out the terms of the Confederation Agreement; that improvements be made in the facilities at the ports of the Maritime provinces, shipping connections established and ocean freights arranged in order that the trade between the Great West and the Seaboard may be fully developed and that the province of New Brunswick should receive some compensation for its loss by reason of the nonfulfillment of the obligations of the Dominion.

The Government of Canada is charged with the responsibility of maintaining the prestige and dignity of the King as the fountain of justice and so soon as the real intention of those provinces which originally entered into the Union is shown, as we submit it has been shown, such intention should be carried out.

Acting on behalf of the people of New Brunswick who have entrusted us with the administration of the affairs of the province, we have felt it to be our duty to present this claim for the consideration of the Commission. We have not attempted



"to fix the amount of any compensation but it is hoped that through the information to be obtained by the research staff of the Commission there may be a fair basis provided upon which compensation may be recommended."

HON. MR. JONES: Mr. Chairman, if it would be possible, I would prefer to wait until to-morrow morning for further discussion on part two, and to fill in with Mr. Matheson . of the Transportation Commission of the Board of Trade. He is very anxious to get through and I think it would just about take up the remaining time this afternoon. I do not think it would take very long in the morning to deal with this part.

THE ACTING CHAIRMAN: The Commission will deal with this matter as you wish.

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MR. F. MacLURE SCLANDERS: Mr. Chairman, and Gentlemen, as the Honorary Secretary Treasurer of the Maritime Board of Trade it is thought perhaps I should give you a few words as to the nature of the organization, and with regard to the Transportation Commission, of which I am also the Honorary Secretary Treasurer. The Maritime Board of Trade is a rather unique organization. It has no membership fee, and the work is purely honorary, and every Board in the three maritime provinces is automatically a member of the Maritime Board, which is now in its thirty-ninth year. It has no funds, we just manage to pay our own way as we go along. For two years we take the secretaryship in an honorary capacity, then it passes to our good friends in Halifax for two years.

The Transportation Commission was placed under the aegis of and is a part of the Maritime Board of Trade. It is financed by the three provincial governments, who also approve the appointment of sixteen Commissioners, who are representative of all parts of the three Maritime provinces, these gentlemen acting in an entirely honorary capacity. There is a seventeenth member, the Honourable Dr. A.P. Paterson, who is our only honorary member. It was he who really organized and created the Maritime Transportation Commission, which was a good many years ago, and he has accomplished a number of years of very good work for the organization, during which period we achieved considerable success in righting many of the rather important transportation handicaps of the three Maritime provinces.

Mr. Matheson is our traffic specialist. I want to thank you on behalf of the Commission for your so kindly allowing him to sit down as he gives his evidence as he has just left the hospital after a rather serious operation.





Mr. R. H. Matheson, Transportation Commission of the Maritime Board of Trade, was called.

MR. MATHESON: Mr. Chairman, and Gentlemen, the first part of this brief deals more or less with the historical aspects, which have been already covered by the brief of the Nova Scotia Government, and by the brief of the New Brunswick Government. I quote in this paragraph under Historical Aspects sections 65 and 66 of the London agreement, which have been so ably explained in the brief of the New Brunswick Government. In view of the fact, therefore, that most of the historical aspects have been covered I will continue on to page 6, - that is in Roman numerals; -

"As to the deficits on the 'eastern lines' the Duncan Commission made the following observation 'It is true that the operation of the Atlantic Division has shown an operating deficit in recent years - - - but there are many considerations to be taken into account in considering that deficit.'

In this connection, also, the report of the Royal Commission to inquire into Railways and Transportation in Canada 1931-2 (commonly known as the Duff Commission) found as follows:

'The promise of railway construction formed an integral part not only of the arrangement of 1867 but also of the terms on which Prince Edward Island and British Columbia later entered the Dominion.

In relation to the Prince Edward Island no more need be said than that the adoption by the Dominion Government of the railway debt and the guarantee of a year-round ferry service were two of the reasons that brought the island into the federation in 1873.

The failure of the early attempts to secure a



"line from Halifax to Quebec has already been mentioned. One of the arguments which successfully carried the Confederation project in the maritime provinces was that a railway joining them to Central Canada could and would be built. The promise was written into the Act of 1867, and the long cherished hope soon became a reality.

For this formidable undertaking, there was selected, largely at the instance of the Imperial Government, which had agreed to guarantee a loan, the long circuitous route of the Royal Engineers' Survey of 1847. This route, its supposed military advantage emphasized by certain incidents of the American Civil War, represented the most distant practicable arc from the American border. In other respects, however, the so-called military survey suffered by comparison with the more direct routes—one approximating that of the National Transcontinental of nearly fifty years later, another projected to descend the fertile valley of the St. John. Thus excessive length and costly construction were added to the economic difficulties of bridging the unproductive gap between Central Canada and the Maritimes, and any real prospect of profitable operation was excluded from the start.

Completed in 1876, from Truro where it connected with Halifax, to Riviere du Loup where the Grand Trunk gave it access to Quebec and Montreal, the Intercolonial added some 700 miles of railway, and its cost brought the amount to which public credit was involved in railway construction at that



"time, to considerably over \$100,000,000. Subsequent extensions, and operation by the Government upon a generally unprofitable basis have since added greatly to the investment represented by the Intercolonial. The line constituted in its inception, however, and remains to-day an essential national undertaking. Besides forming the original link in what has since become the extended and multiple chain of railway communication that connects from east to west the geographically disjointed belt of Canadian Confederation, the Intercolonial continues to serve as the principal purely Canadian outlet, available throughout the year, to the Atlantic seaboard. So if to-day the Intercolonial, forming with the National Transcontinental Railway the eastern lines of the Canadian National System, seems to present many of the aspects of commercial failure, it should be remembered that its economic defects are to a great extent inseparable from an origin that had its roots, and remains rooted, in the broader considerations of public policy."

Just for a follow-up I wish to read the names of a number of additional railroads that have been added to the so-called Eastern lines since 1929: The Inverness Railway and Coal Company, on August 8th, 1929; the Lake Verde Subdivision of Prince Edward Island, September 29th, 1930; the Kent Northern Railway, New Brunswick, September 1st, 1929; the St. John and Quebec Railway, New Brunswick, September 3rd, 1929; the Quebec, Oriental and Atlantic Quebec and Western Railway, June 1st, 1929. From 1914 to 1920, on the other hand, there were no less than twelve other railways taken over by the Intercolonial Railway, or what was known as the Canadian Government Railways.





So that there has been a considerable number of deadheads, so to speak, of railways which have been financially embarrassed and which were taken over and operated as part of the Intercolonial Railway. These railways have shown a considerable amount of deficit; in fact, two of these railways back in 1935 were to be abandoned, and after a hearing of the Board of Railway Commissioners at that time they were continued, but the financial loss of those railways was considerable.

Now, returning to the main part of my brief, which I have entitled "Changed conditions and its Effect on the Maritime Provinces":

"The recommendation of the Duncan Commission and the subsequent Maritime Freight Rates Act is a matter of record. It is proposed in this brief, therefore, to indicate briefly some of the transportation developments during the last ten years and its effects on the Maritime Provinces.

At stations in the Maritimes only about 15% of the freight loaded in 1936 consisted of manufactured and miscellaneous products whereas agricultural, mine and forest products amounted to about 84% of the total. In Ontario, for the same year, manufactured and miscellaneous commodities amounted to about 34% of the total freight loaded. In other words, the bulk of the goods produced in the Maritimes are basic or primary commodities which, because of their low value and high density, cannot bear high freight rates."

I might say in the passing of the Maritime Freight Rates Act there was a considerable development of water



transport, which had a material effect in also extending the business of the Maritime industries, but unfortunately, water transport is only seasonal. I might say it is very suitable to some of the commodities that are produced in the Maritime provinces, such as lumber, sugar, and commodities of that nature. In addition to that the water transport has enabled, to some extent, to get the grain products down in this section of the country, which has been a tremendous help to the farmers during the last number of years.

"A large number of the industries of the Maritime Provinces are competitive with industries located at or near the centre of the greater population and industrial development of Canada. It is patent, therefore, that differences in the cost of transportation are actually additional costs of production to Maritime industries. These differences must be absorbed in order for Maritime industries to compete with industries located nearer the larger markets.

The Maritime Freight Rates Act has had the effect of alleviating to some extent persons and industries in the Maritime Provinces."

I might say since the development of motor truck competition in the Central provinces, if we had not had the benefit of the Maritime Freight Rate Act there is no doubt the competition situation as far as our local industries are concerned would be very deplorable.

"But prior to the passing of the Act motor truck competition in Ontario and Quebec had already become a menacing competitor of the rail carriers. Subsequently, the railroads were forced to reduce the



"rates in order to maintain and, if possible, to recoup traffic from this new competitor. The competition was more keen and quicker to develop in the industrial centres of Ontario and Quebec. It was not long before the relationships in rates established by the Maritime Freight Rates Act on a number of commodities were disrupted and the benefits of the Maritime Freight Rates Act, to some extent, nullified.

The situation was studied by the Transportation Commission and it was decided that under various sections of the Maritime Freight Rates Act the relationship in rates could be re-established on complaint. The railways did not accept the interpretation so a test case on the rates on potatoes was prepared and presented to the Board of Railway Commissioners. The Board of Railway Commissioners decided to the effect that although they were of the opinion the Act applied to competitive tariffs outside of the preferred area the complainant was required to indicate prejudice or to prove that the competitive rates complained about had resulted in a loss of trade. The Board held also that in the event of a finding of prejudice they only had the power to cancel a protested rate. It is to be appreciated that the power only to cancel a rate without being able to order a corresponding adjustment would tend to render the railways impotent to meet competition of other forms of transport."

In fact, in the Maritime provinces we would feel, if we had such a power and if we were holding that power over the rail carriers it would bring the Act - not only the Act





but the industries of the Maritime provinces into dispute. For that reason we did not try to enforce that particular aspect to any degree. You can quite appreciate the position of an industry, say in Toronto, shipping to Montreal; we could indicate prejudice and the only thing that would happen would be cancellation of that particular rate, and we would not be looked upon very well by the other sections of Canada.

"The Transportation Commission appealed the decision to the Supreme Court. At the same time, the railways in the stated case questioned the application of the Act to protested competitive tariffs or rates in effect outside the preferred area.

In the 'Potato Case' it was found to be practically impossible to indicate prejudice as required by the Board because of so many economic factors involved which might influence the movement separate and apart from the transportation."

Prior to 1934 and 1935 there was a considerable production of potatoes in the Maritimes as well as in other sections of Canada. Yet Ontario and Quebec formed the chief market at that particular time. Our foreign markets were somewhat curtailed and the only place we could ship potatoes was to the central provinces. Under the circumstances there was that economic factor involved; we had the supplies and the freight rate per se was only one of the factors that had to be taken into consideration in considering the case.

"The difficulty is to segregate the transportation factor from the others and have it appear as the cause of the destruction of Maritime trade at a



"particular time and place. Indeed, even if it could be indicated that a competitive rail rate might be the cause of the destruction of trade from the Maritime Provinces it would be difficult to segregate the competitive rail rate from the motor truck or water rates as the actual cause of the destruction of trade. The fact remains, however, that competitive rates tend to destroy rate relationships on which industries have been constructed and developed and the industries located within the pale of motor and water transportation have a distinct advantage over those that are located outside and are competing in the same markets in the competitive zone. In this connection, it is interesting to note that Mr. E.P. Flintoff then General Solicitor for the Canadian Pacific Railway Co., in arguing before the Board of Railway Commissioners on April 26, 1927 pertinent to matters arising in the General Freight Rates Investigation (Order-in-Council P.C. 386) made the following statement:"

This is particularly in respect to the complaint of the Western provinces that the rates in the Western provinces were higher, relatively, than the rates in the Eastern provinces.

"There is no question that we are losing business to the motors at the present time, losing it in very large volume.

The situation has not developed sufficiently to enable the railways to come to a final decision as to how far they should go in the direction of meeting that motor traffic. As a matter of fact, it has been held by the Board in numerous decisions



"that it is in the discretion of the railway companies as to the extent to which they shall meet competition of that sort. The companies have not come to a conclusion as yet to what extent they would reduce those particular rates, but it is a matter that will have to be gone into.

The fact remains, however, as pointed out by Mr. Watson, particularly in conjunction with the boat services that this motor situation is becoming a very serious one, and that the combination of motor competition and water competition has had a very serious effect on the traffic of the railways in Eastern Canada.

Mr. Woods suggested that there was no water competition on local traffic between certain points. That is true, in certain cases, but does anyone suggest that it would be practicable from a rate making standpoint to have a different basis of rates from or to these interior points while rival industries at other points continue to enjoy a lower basis? As Mr. Watson pointed out this would disrupt the whole rate structure. Moreover, it would tend to destroy the fruits of the improvement of large sums of money which has been spent in the development of industries, relying on existing rate relationships. Towns like Kitchener, Galt, Guelph, Brantford, London, Peterboro, Orangeville and many other manufacturing centres would be put in a position of great disadvantage by any such action.

The above statement is significant when it is considered that the Maritime Freight Rates Act was passed on recommendations made by the Royal Commission on Maritime Claims in order to re-establish to





"a certain extent the relationship in rates that had previously existed and on which Maritime industries were first developed. The Royal Commission found that from 1912 to 1925 the rates from the Maritime Provinces were thrown out of line and consequently the relationship in rates with industries in other sections destroyed. The Maritime Freight Rates Act tended to a degree to re-establish the previous relationship.

In the 'potato case' the railways showed that despite the special competitive rates on potatoes in Ontario they succeeded in recapturing only a small proportion of the total movement. Nevertheless, the fact remains that the relationship in rates had been destroyed and shippers within the competitive zone had an advantage over their competitors outside, whether or not the relationship was destroyed by the motor truck, water or rail carriers. In the case of potatoes, because of the various economic factors involved, it developed that it was not possible to indicate loss of trade from the Maritime Provinces. Yet, it cannot be refuted that in the case of some commodities that the shipper may be forced to absorb the increased differences in the cost of transportation in order to compete with rival concerns adjacent to the principal markets and to the extent that such absorption is necessary that industry finds it more difficult to compete and must be forced to sacrifice labour or capital. In the event the shipper may find it necessary to forego the business in the markets of the competitive zone the rail carriers also are the losers, and doubly so,



"if despite special competitive rates in the competitive zone they fail to re-capture any of the traffic. On this same angle the following excerpt from an address of President Ralph Budd of the Burlington Lines delivered before the Associated Traffic Club recently is most interesting.

'The rail carriers are continually being urged by shippers to reduce their rail rates to meet truck competition and it is an anomaly that, where rail shippers not affected by motor competition are satisfied with their present rail rates, it develops that, as soon as a rate between two certain points is reduced to meet existing motor truck competition, other shippers not affected by the same truck competition ask the rail lines to reduce their rates in order to maint in the rail parity that formerly existed, thus resulting in a continual whittling down of the freight rate structure.

It must be admitted in this connection that the carriers themselves are not altogether blameless because, in instances, a single carrier has reduced rates to meet truck or other competition, local in application, which has resulted in widespread reductions in revenues of other carriers - - this because of recognized relationships.'"

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In this respect I refer to appendix "J" for specific illustrations of what has taken place in the United States. I will not bother going through them at this time but it shows the adjustments that have been made there because of competition of a local nature and its widespread effect on the rate structure throughout the whole of the United States, in order to maintain rail rate parity and permit the industries on their own particular lines to compete in the larger markets of the United States.

In appendix "J" (1) is a comparison of the freight rates in effect when I prepared the brief a couple of months ago, and it shows the widespread changes there. And in view of that being set out there I will not need to quote the reference further.

"The situation of which Mr. Budd speaks is applicable chiefly to the United States where with their heterogeneous network of railroads ~~converging~~ on large and important markets an alteration in rates in one section may be reflected throughout a large territory. In Canada the situation is somewhat different in view of the fact that the Canadian National Railways and the Canadian Pacific Railway Company serve practically all the Canadian territory. An alteration in one section to meet local conditions does not necessarily result in adjustments in other sections where the same competitive conditions and circumstances do not exist. In Canada competitive rates are at the discretion of the railways and when such rates are filed the railroads generally indicate to the Board the competitive conditions and circumstances involved.





It, therefore, follows that the railways in their judgment might consider that an adjustment generally would result in a greater loss than if the adjustment was restricted to the section in which it was considered absolutely necessary. Moreover, if the adjustment necessary in one particular section was extended to another territory from which the same competitive conditions did not prevail it would probably result in a case of unjust discrimination" - That is a case of unjust discrimination by the Board of Railway Commissioners, - "from still another interested territory.

For some time after the passing of the Maritime Freight Rates Act there was some doubt expressed as to whether or not a competitive tariff carrying rates below those of the regular tariffs, and intended to meet special carrier competition, was or was not within the purview of that Act. As a matter of fact the Board of Railway Commissioners issued a ruling dated September 23, 1932," - It is not necessary to read the ruling. The whole case is contained in C.R.C. Volume 41 at page 56. That is, the Canadian Railway Cases, page 56. I want to go into the competitive rates and I think it would be advisable for me to read through and I could answer any further explanations if necessary."

"Competitive rates are generally implemented to meet competition as it exists. In other words, the railways may and have offered shippers rates which they consider sufficient to compete against motor truck or water carriers



but under the Maritime Freight Rates Act the rail carriers also receive in addition an amount representing the difference between the published rate and the so-called 'normal' rate which is described as the rate that would be in effect if the Act did not apply.

Competitive rail rates may or may not be related to a fixed basis of rates. As stated previously, such rates are what the traffic manager considers sufficient to attract the traffic from other forms of transportation (subject to a minimum possibly of the out of pocket expenses plus a small profit). In the Maritime Provinces the railways have been forced to implement in a number of cases competitive rates to meet competition from the motor truck and water carriers. The reductions effected, however, appear to be principally water competitive and terminate generally with November 30th. Until this last year the Canadian National Railways published their summer competitive tariff effective in the Maritimes without a provision subjecting the tariff to the Maritime Freight Rates Act. One would gather from this omission that in the returns made to the Federal Government, for payments or allowances under the Act that the Canadian National Railways did not seek credit for traffic moving under that particular tariff. In the 'Potato Case' the question arose why the summer competitive tariff was without the provision subjecting the tariff to the Maritime Freight Rates Act and the Canadian National Railways replied to the effect that in the event of loss because of such rates



it would be included in the deficits. Apparently the Canadian National Railways did not consider allowances justifiable on those competitive rates. Yet, at the same time, tariffs publishing competitive rates on specific commodities contained the provision. On the other hand, 'other companies' under Section 9 of the Act were receiving all along re-imbursment for all corresponding competitive rates.

In order to ascertain if the railways, in effecting competitive rates in the Maritime Provinces, were governed principally on competitive conditions and circumstances a comparison was made of the competitive rates on various commodities within and from the Maritimes and within Central Canada and to the Maritimes" - This is contained in Appendix "F". It will not be necessary to quote the rates. - "The items are selected at random. This comparison revealed that, in some cases, the same competitive rates applied within and from the Maritime Provinces as within central Canada and to the Maritimes the railways also received re-imburements or allowances under the Maritime Freight Rates Act.

The pick-up and delivery service in other sections of Canada was next carefully studied. It was found that in the case of this service between specified points in central Canada, the inclusion of Pick-up and Delivery Service at the regular distributing rates is approximately equivalent to the less than carload rates on the Canadian National Railways in the Maritime Provinces as reduced under the Maritime Freight Rates Act. The difference being that in the





Maritimes the loss than carload class rates are reduced approximately 20% whereas the rates in central Canada approximate the regular distributing class rates with Pickup and Delivery Service included free (Free Pick-up and Delivery Service is performed in Central Canada up to a certain mileage and beyond that mileage the regular distributing rates are increased by small surcharges." - This is also covered by Appendix "G" and Table 3, for percentage reductions.

"Because of the greater motor and water competition in the central Provinces it is natural to expect that in the central Provinces the railways have been forced to implement a greater number of competitive rates than in other regions where the competition is not so keen. Even despite the competitive rate efforts of the railways unregulated competition among the truck carriers has no doubt resulted in rates in that area below any the railways may desire to establish. As stated previously, industries outside the pale of the competitive area are at a distinct disadvantage because of destroyed parities and also because of the convenience their competitors enjoy through the greater flexibility of truck transportation. Then, too, motor truck distribution continues in a large part of the central Provinces throughout the whole year. Resultantly, the rail carriers are forced to continue in effect, during the same period, a large number of competitive rates.

The competitive rates within the Maritimes and from and to the Maritimes (Excepting the



competitive grain & grain products rates Eastbound), terminate as previously stated, with November 30th. As a result, Maritime industries that enjoy water transportation during the season of open navigation and also water competitive rates by rail (inland navigation terminates about Nov. 30th) are at a distinct disadvantage with industries enjoying competitive advantages throughout the year. Indeed, the relationship in rates with competing industries in the central Provinces is greater in some instances, than prior to the Maritime Freight Rates Act. As an illustration of this, the water competitive rates on sugar from Halifax, N.S. and Saint John, N.B. terminate generally with November 30th, whereas the competitive rate on sugar from Chatham, Ontario, to some of the principal markets of Ontario continue throughout the year. As a result the difference in the carload rate on sugar on January 1st, 1937, from Halifax, N.S. to Toronto, Ontario as compared with the rate from Chatham, Ontario, was  $40\frac{1}{2}$  cents or an increase above the relationship prior to the Maritime Freight Rates Act of  $15\frac{1}{2}$  cents per 100 pounds."

This is contained in Appendices "H" and "I". I will stop to refer to appendix "H", which is the history of car load competition rail rates on sugar from Chatham, Ontario. Beginning with the period June 20th, to November 30, 1932, there was a competitive rate into Hamilton of nearly two points down to October, 28th, 1930, and up to the present time, or rather as of August 1st, 1937. There are a considerable



number of points which are all competitive with the sugar refineries in the Maritime Provinces and, incidentally, they enjoy no competitive rates throughout the winter months. In other words, relying just on this particular instance alone, the relationship in rates has been increased in a large number of cases beyond what they existed prior to the Maritimes Freight Rates Act.

"Similarly, other comparisons indicated increases in the relationship of rates on other commodities"

I might stop for a moment to refer to the importance of this particular aspect. After all in the Maritime Provinces we have to seek the larger markets of Ontario and Quebec, and to indicate that rate reductions have been effected there without corresponding reductions for industries of this particular section, is just the same as if a tariff is imposed because our industries find it that much more difficult to compete and to that extent that they find it difficult to compete, naturally the industries become retrogressive, and unless they can seek foreign markets for their lumber, fish, potatoes and other products, they will have to curtail production. And I just want to interject that particular statement at this time to bring forward the pertinency of this whole brief in respect to transportation to your consideration.

"The competitive rail reductions effected in the central provinces are specific, excepting in the case of the tariffs covering free pick-up and delivery service on less than carload lots. Specific rates apply generally from and to specified points or within a limited mileage.





"In the cases that the railways have reduced rates, at their discretion, to meet competition in the central provinces one finds that the rates have been reduced more than 20% in a large number of cases. In order to ascertain generally the average production of the earload competitive rail rates in the central provinces frequency distributions were prepared for : "

This is all a matter contained in the brief and can be referred to. I have the substantiating material, which the statisticians can refer to, in reaching my determinations in respect to the percentage reductions and so on. Turning to page 11:

"By means of these frequency distributions it was determined that the representative or typical rates per 100 pounds were as follows:"

I do not believe it is necessary to quote that. Turning down to the other paragraph: -

"From the above it is seen that the typical competitive rates for the various distances and commodities"

I might explain, in order to strike a representative figure, I had to take regular distances, otherwise my frequency distribution from a statistical compilation would not be accurate and contained in the rates I did compare were some commodities which are not produced in the Maritime Provinces and consequently I am making that qualifying statement. But I wish to point out that some of those industries, when the rate situation is favourable, might be established in the Maritime Provinces..

... "are from 17 to 28% below the typical normal rates and 13 to 29½% below the rates as on July



July 1, 1927."

That is the rates in Ontario. "However, it is to be pointed out that some of the commodities contained in Appendices "A" - "D" are not produced in, nor shipped from, the Maritime Provinces "

That is the specific commodities contained therein.

"So therefore, even if the rates on those commodities were further reduced it would not be of much concern, if any, to Maritime industries."

That is some of those commodities that are not produced in the Maritimes.

"The important feature is that the studies tend to indicate, on the average, by what amount some of the rail rates have been forced downwards by competition in the central provinces.

In appendix "L" a comparison is made of the 1937 competitive rates in Ontario and Quebec with the rates as on July 1, 1927, on a number of commodities that are also produced in the Maritime Provinces."

MR.STEWART: You select July 1st, 1927, as the date on which the Maritime Freight Rates Act came into force?

MR.MATHESON: Right.

"The percentage reductions are significant. In the case of most of those commodities no reductions have been effected from the Maritimes to maintain the previous rate relationships excepting in the case of one or two items on which the rates were reduced because of water competition. In the instances in which competitive reductions are effected from Maritime Points one finds that the rates terminate generally with November 30th each year."

THE ACTING CHAIRMAN: December?



MR.MATHESON: No, I think there is an Errata. That should be November 30th.

"Whereas a large number of the competitive rates in Ontario and Quebec continue throughout the year.

The destruction of established relationships is presented more forcibly in a comparison of rail rates from producing points in the Maritimes and the central Provinces to some of the principal consuming points in the latter. In addition to the competitive changes reflected in the rail rates there are undoubtedly a large number of reductions incidental to motor truck transportation which also has the effect of increasing the relative disadvantages of Maritime industries. The fact that motor truck rates are not published and fluctuate from day to day from person to person renders it impossible to compare rail rates from the Maritimes with truck rates within the competitive zone of central Canada. Suffice it therefore to consider the following rates which 'per se' reveal the significance of the changes which have taken place."

I probably can quote one or two of these. I will take biscuits and confectionery. From London, Ontario to Montreal, Quebec, the rate on carload lots, 24,000 pounds, in 1937 is fifty-four cents; the rate on July 1st, 1927, was sixty-three cents. From Halifax and Saint John to Montreal the rate in 1937 was fifty-five cents and the rate on July 1st, 1927 fifty-five cents, - no change. Similarly there are other commodities down the list. We will take stoves, London, Ontario to Toronto





there is another illustration, the rate in 1937 twenty-nine cents, July 1st, 1927, twenty-nine cents. There has been no change in rate but there has been a reduction in the carload minimum down to ten thousand pounds. Now, it is some of these illustrations which took place, such as the reduction of carload minimum which makes it possible for the shipper, the consignee, to get the small loads, and the shipper in the maritimes, who has to ship, in order to get the benefit of the carload rate, will have to fill up the car to twenty-four thousand pounds, whereas his competitor will only ship ten thousand pounds and the consignee under the circumstances would have just double the amount of goods on hand to move, and would prefer the ten thousand pound quantity rather than the twenty-four thousand pounds.

We go over to canned goods, from Quebec to Toronto the minimum in this particular case is increased from twenty-four thousand to thirty thousand pounds, but the rate is thirty cents compared with forty-nine cents in 1927. No change from Halifax and Saint John to Toronto.

We take on apples from Picton to Montreal on December 1st, 1937, the rate was twenty-nine and a half cents, whereas the rate in 1927 was forty cents. On the same date from Fredericton to Montreal the rate was forty-four cents, which was the rate before on apples of forty-four cents, no change.

We take in the case of canned goods including fish, from Aylmer, Ontario, to Montreal we find there for a carload of a minimum of thirty thousand pounds the rate on November 30th is twenty-five cents as compared with a rate of fifty cents in 1927. On December 31st we find a



rate of forty-one and a half cents as compared with a rate of fifty cents on July 1st, 1927. From Charlottetown and Saint John to Montreal there has been no change, winter or summer.

We also find similar changes in respect to pig iron, iron bars. Shoes from Fredericton in relation to a comparison with other points in Ontario. Cider; woolen or cotton blankets; canned goods, dates, jolly powders; hosiery, knit goods; refrigerators and various other commodities.

Now then we turn to the loss than carload rates from Quebec to Moncton we find that the same rates prevail on January 1st, 1938 as prevailed on July 1st, 1927. We find however that pick-up and delivery service had been established from Toronto, Ontario, to Quebec, and on January 1st, 1938, at which time, incidentally there is no road competition between Quebec and Toronto, but there exists special pick-up and delivery rates purported to meet motor truck competition, which incidentally figures out, when you consider the pick-up and delivery service, figures out to approximately twenty per cent reduction in rates. On the other hand there has been no corresponding service performed for the Maritime Provinces. I go further into the pick-up and delivery service as I go on.

Then we go to a comparison of loss than carload rates to Montreal from Saint John and we find there is no change in rates from January 1st, 1938, to July 1st, 1927, whereas from Owen Sound, Ontario, a distance of 469 miles, a lower mileage incidentally than from Saint John, we find a reduction of rates as well as the performance of free pick-up and delivery service. All these rates that are quoted are covered by tariff references on the Canadian National as stated below on that particular page.



Now, we will take the summary and conclusions.

#### SUMMARY AND CONCLUSIONS

"The evidence indicates definitely that the changes which have taken place during the last ten years have had the tendency, in some cases, to nullify the rate relationships established by the Maritime Freight Rates.

The question now arises what can be done to maintain the relationship in rates established by the Maritime Freight Rates Act and destroyed by competitive conditions and circumstances prevalent in other sections of Canada? The Maritime governments and the Transportation Commission of the Maritime Board of Trade have endeavoured through the Courts to clarify the interpretation in the light of the intent and purpose of the Maritime Freight Rates Act but the Courts apparently adhered to a strictly literal interpretation of various sections which also had been considerably in doubt.

The report of the Royal Commission on Maritime Claims appears to suggest the solution to this problem. It was established by the Royal Commission after a balanced study that the Inter-colonial Railway was constructed, among other things, 'to afford to Maritime merchants, traders and manufacturers, a market of several millions of people instead of their being restricted to the small and scattered populations of the Maritimes themselves, particularly in the light of the disturbance with which their trade was threatened as a result of the discontinuance by the United States of the reciprocal arrangements that had





"prevailed". but that the evidence indicated definitely that from 1912 to the time of their investigations changes were made in the rate structure of the Intercolonial Railway with the net result that the Intercolonial rates have suffered an estimated cumulative increase of 92 per cent (i.e., their 100 has become 192)."

Incidentally, this estimate is based on figures submitted by the railways to the Duncan Commission at a private session; I believe, in Montreal or Ottawa, I am not sure of that point. I have the figures here, however, which indicate, to some extent, the increase. Just selecting a distance--say one hundred miles--and compare the increase with the standard rates in Ontario from 1907 to 1926. In 1907 the first class rate in cents per hundred pounds for a distance of 100 miles in I.C.R. territory, that is in Intercolonial Railway Territory, was 28 cents, and in 1926 it became 65 cents or an increase of 232 per cent. In 1907 the rate in Ontario was 36 cents, which was increased in 1926 to 65 cents. In other words, the I.C.R. territory and Ontario had the same rate for the same distance, or, in other words an increase of 181 per cent. The percentage of the Intercolonial increase to Ontario was 78 per cent greater. I will not refer to any more, but this was just an illustration--unless you wish to ask questions later.

"The estimated average increase of rates for the rest of Canada is 55 per cent (i.e., their 100 has become 155)". As a result of the increases the Royal Commission concluded that 'the rate structure as it has been altered since 1912 has placed upon the trade and commerce of the Maritime provinces (a) a burden which, as we have read the



"pronouncements and obligations undertaken at Confederation, it was never intended it should bear, and (b) a burden which is, in fact, responsible in very considerable measure for depressing abnormally in the Maritimes to-day business and enterprise which had originated and developed before 1912 on the basis and faith of the rate structure as it then stood." Consequently, it was recommended 'that an immediate reduction of 20 per cent (so that 192 will become approximately 155) be made on all rates charged on traffic which both originates and terminates at stations in the Atlantic Division of the Canadian National Railways (including export and import traffic, by sea, from and to that division)--"

Incidentally, the import traffic provision was never fulfilled in the Maritime Freight Rates Act.

"--and that the same reduction be applied to the Atlantic Division proportion of the through rates on all traffic which originates at stations in the Atlantic Division (excluding import traffic by sea), and is destined to points outside the Atlantic Division."

The import traffic, there, was not import traffic in the Maritimes, but was import traffic to points outside which was to be reduced.

"The recommendation of the Royal Commission on Maritime Claims as implemented in part by the Maritime Freight Rates Act rectified, to a degree, the situation that existed at that time. However, since the Act was passed this study shows that 'compelled' rates have in a number of cases destroyed the relationship that existed. The rail-



"ways argue that the situation to-day is different in that it is not of their own making but that it has been forced upon them by other forms of transportation. To approach the problem wholly from the viewpoint of the railways does not take cognizance of the fact that the Intercolonial Railway was constructed and was to be operated 'to afford to Maritime merchants, traders and manufacturers a market of several millions of people instead of the restricted market of the Maritimes themselves.'

The fundamental difference between the rate changes on the Intercolonial Railway from 1912 to 1926 and the condition that exists to-day is that the relationships were previously destroyed chiefly from increases whereas to-day a number of the relationships have been destroyed by competitive rates or, in other words, decreases outside the 'Select Territory'.

The effect is the same in both cases except that in the latter instance the railways are forced by local conditions to implement the competitive rates and whether or not the railways attempt to meet the competition of other barriers the traffic would probably move at the lower rates.

The question is raised as to what would be the policy of a railroad separate and apart from the two transcontinental railways, that found its relationship of rates to a particular market destroyed by a competitive situation strictly local in character. It is explained in this study what has taken place in the United States in some circumstances of this kind. It would be logical





"to expect that the company not affected by the direct competition would endeavour to adjust its rates to maintain its previous relationship in cases in which it was necessary to protect industries located on its line. The incidence of the Intercolonial Railway under the national setup, therefore should not be ignored in a question of maintaining rate relationships."

That, I think, is very important. I have shown and quoted the statement of President Budd, supported by illustration of rate adjustments made in the United States in order to permit railroads there to maintain a parity of rates for industries on their particular line. Where competition was local in nature, between two specific points, adjustments were effected by means of the railways, in order to maintain industries all over the United States. Therefore, I repeat that the incidence of the Intercolonial railway under this national set up which must be given or should be given all due consideration in maintaining rate relationship. This is what has happened since the Maritime Freight Rates Act has been passed; the rate relationship has been destroyed, not because of the motor truck, but due to the interpretation of the Act. We have, more or less frozen rates, because we cannot get corresponding reduction. It is my opinion that this aspect of the matter should be given due consideration.

"It was recommended by the Royal Commission on Maritime Claims that 'from a public point of view, in return for the statutory and other privileges which railway companies enjoy, it may not be unreasonable that there should be a responsible review of their policy (as interpreted in their rate structure) in its relation to the natural basic products of the country, and the



"development of these products and associated enterprises."

I note that the Saskatchewan government, in its brief, made similar proposal in this respect.

"On making this recommendation the Royal Commission considered that the Railway Board should be empowered to consider the question of reasonable compensation and that they should have the authority to initiate an experimental rate for the purpose of encouraging an industry even though the rate might not give reasonable compensation to the railway. The Royal Commission was of the opinion, however, that in a review of that kind there would have to be:--

(a) A proper balancing of the structure of railway rates so that on the whole (though not in a particular item of business) there would be not only reasonable compensation to the railway company for carrying services it renders but such reasonable compensation over all as to permit of a certain amount of trade development.

(b) A means of ascertaining whether, in fact, the rate asked for is necessary to the producing or trading interest, bearing in mind that a reduced rate may be pressed for when trading results might show it was not required, or on the other hand, when trade could not be very much developed even if the rate asked for were conceded.

If the Railway Board is to be vested--as we think it should be--and we recommend that it should be--with the somewhat fuller supervisory responsibility that we have indicated, we think it should also be vested--and recommend accordingly--with



"power, in weighing an application that raised these considerations, to order an accounting investigation at their own hand, into the incidence of the railway charge on the costs of production of the commodity, and its relationship to other costs, and to the general trading results of the interest involved.'

When the Royal Commission made this recommendation it had under consideration the Railway Act and they were viewing the situation from conditions and circumstances that existed in the Maritime Provinces and the difficulties encountered under the limited power granted to the Railway Board to deal with ~~water~~ questions involving the development and propagation of Maritime industries. It is patent that the Royal Commission was not aware in what exact form, if any, their recommendations in respect to a 20 per cent reduction would take. The fact, remains, however, that the recommendation for the extension of the power of the Railway Board was not implemented, either into the Railway Act or the Maritime Freight Rates Act.

In a consideration of this submission it may be necessary to review the matter to some extent in relation to the National Policy. On this angle the following findings of Dr. H. A. Innis in his complementary Report on the Nova Scotia Royal Commission Provincial Economic Inquiry 1934 are interesting:

'The burden of the tariff is primarily, that it tended to compel Nova Scotia (Maritimes) to pay the full cost of an expensive system of





"transportation.

'It is impossible to consider railway rates isolated from the tariff. Prices at the more distant points tend to equal central Canada prices plus the railway rate or foreign prices (for example United States prices) plus transportation costs plus the tariff.'

'If it be assumed that it (National Policy) is in the interests of the industrial areas; (an assumption which would not be admitted by all groups in these areas) and that it forces traffic to move east and west and reduces the overhead costs on the railways then as has been suggested the burden of the tariff to the Maritimes and especially Nova Scotia tends to be the complete cost of the Intercolonial Railway.'

It appears from the deductions of Dr. Innis that the Maritimes actually tend to bear the full burden of rate adjustments and the deficits on the Intercolonial Railway. This phase of the question opens a field of investigation beyond the scope of this particular submission. Yet, it is suggested one that is worthy of thorough exploration."

The following paragraph is put in as a result of representations from Prince Edward Island, and the suggestion emanated from the interested members of the Commission in that province.

"The transportation difficulties peculiar to Prince Edward Island are deserving of reference at this time. It appears that with the increasing development of motor truck distribution and travel Prince Edward Island is considerably handicapped



"with the mainland. Some improvement has been effected during the last ten years but traffic delays during the winter months are common. In the summer months motor-tourists have experienced considerable delays due to insufficient accommodations on the present ferry service. Motor truck and passenger services are also impeded by the present cost."

I might say the illustration in that particular respect is another industry located in the Maritime provinces, on the mainland. I shall not refer to the particular industry or the particular section of the mainland but there is a competing industry located in Charlottetown. The mainland industry enjoys<sup>a</sup> very reduced rate, whereas, the other one could not get a corresponding rate, because it could not indicate any motor truck competition. These people thought they were being discriminated against,<sup>and</sup> they had no recourse to petition the railway commissioners because competitive rates are entirely for the railways.

"The question arises would the present facilities even increased or improved upon tend to eliminate the transportation difficulties of Prince Edward Island as a province of Canada?"

More recently, notice has been given by the railways that the other car ferries are being renovated to accommodate some of the motor cars. It is still questionable whether the improvement will take care of the situation. There has also been the Wood Island Project in order to develop the transportation facilities there to connect with the mainland, that is, I understand under consideration at the present time.



"Improved transportation on the mainland without a concurrent improvement between the Island and the mainland will result in increased handicaps to the Island Province. The resultant effects will tend to be trade retrogression."

At the time I received the communications from the Island, it was suggested that the practicability of communication between the mainland and the Island by means of a tunnel be taken into consideration.

I I might add, before I complete this, that on the question of competitive freight rates, the competitive situation in Ontario, there is evidence given before the committee considering the Transport Bill as well as before the Chevrier Commission in Ontario by the Motor Truck Organization which contended that the railways, in a large number of cases, were quoting rates below their cost of movement. Just how they calculate that the railways were carrying below the cost of movement, I do not know, because cost, so far as transportation is concerned, is a factor which has been looked upon more or less as an item which cannot be taken at any moment. It is hard to say what the cost of carrying any particular commodity at any particular time between two equi-distant points is, yet they have made the accusation that the railways are quoting ridiculously low rates; rates which have been below the out of pocket costs. I understand that representations have been made before the Chevrier Commission as well as before the committee considering the Transport Bill. A reference to it is contained in the minutes and proceedings, number five, being representations by the automotive transportation association of Ontario concerning bill number thirty.





THE ACTING CHAIRMAN: This submission should be filed as exhibit number 366.

EXHIBIT NO. 366: Submission of Transportation Commission of the Maritime Board of Trade.

THE ACTING CHAIRMAN: Have you any questions, Mr. Stewart?

MR. STEWART: I would just like to ask one question. Perhaps if Mr. Matheson has not the information he could get it from the Prince Edward Island Members of the Commission. Have you any idea of the cost of the tunnel between Prince Edward Island and the mainland?

MR. MATHESON: I understand there was an investigation or survey made a few years ago. I have no idea what the cost would be. I think, if you compared it with the cost of the tunnel just completed in New York, which was for a comparatively short distance, the cost of one for the ten miles across to the Island would involve a large sum of money.

MR. STEWART: Several million dollars per mile, perhaps?

MR. MATHESON: If I remember correctly the cost of the tunnel in New York was approximately \$5,000 per foot.

THE ACTING CHAIRMAN: I would like to make the arrangements for to-morrow quite clear. We will go ahead with this brief at ten thirty in the morning. You will be here at ten thirty to-morrow morning, Mr. Jones?

THE HON. MR. JONES: Yes, Mr. Chairman, I will.

(The Commission adjourned at 5 o'clock, to resume at 10.30 a.m., Saturday, May 21, 1938.)



ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

REPORT OF HEARINGS

REPORTERS:

George Thompson  
John Robertson  
David Torry





FREDERICTON, NEW BRUNSWICK, MAY 21, 1938

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## ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

FREDERICTON, NEW BRUNSWICK, MAY 21, 1938

The Royal Commission appointed to re-examine the economic and financial basis of Confederation and the distribution of legislative powers in the light of the economic and social developments of the last seventy years, met at the Parliament Buildings, Fredericton, New Brunswick, on Saturday, May 21, 1938, at 10 a.m.

PRESENT:

COMMISSIONER JOSEPH SIRCOIS.....THE ACTING CHAIRMAN

JOHN W. DAFOE, Esq.	)	
DR. ROBERT ALEXANDER MacKAY	)	
PROFESSOR HENRY FORBES ANGUS	)	
	)	Commissioners

Commission Counsel:

James McGregor Stewart, K. C.

Secretariat:

Alex. Skelton, Esq.	Secretary
Adjutor Savard, Esq.	Secrétaire Français
R. M. Fowler, Esq.	Legal Secretary to The Chairman
Wilfrid Eggleston, Esq.	Assistant to the Chairman

FOR THE GOVERNMENT OF NEW BRUNSWICK:

Hon. J. B. McNairn, K. C.	Attorney General
Hon. A. P. Paterson	President, Executive Council, Minister of Education, and of Federal and Municipal Relations
Hon. A. C. Taylor	Minister of Agriculture
Hon. F. W. Pirie	Minister of Lands and Mines.
Hon. W. P. Jones, K. C.	Counsel
Hon. C. T. Richard	Provincial Secretary- Treasurer
Hon. J. H. Conlon	Director of Federal and Municipal Affairs

FOR THE MARITIME BOARD OF TRADE:

Mr. R. H. Matheson	Representative of the Transportation Com- mission.
Mr. T. M. Sclanders	Representative





FOR THE SAINT JOHN BOARD OF TRADE:

Mr. L. W. Simms	Representative
Mr. J. D. McKenna	President

FOR THE CITY OF SAINT JOHN:

Mr. Murray MacLaren	Mayor of Saint John
Mr. N. Tennant	Counsel

FOR THE FREDERICTON BOARD OF TRADE:

Mr. R. L. Phillips	Representative
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Parliament Buildings,  
Fredericton, New Brunswick,  
May 21, 1938.

MORNING SESSION

The Commission met at 10.00 A.M.

MR. MATHESON: I wish to refer specifically to Appendix "G" (1) with reference to the free pick-up and delivery service on the railways in Canada. I brought the point up yesterday but I did not refer in detail to this particular appendix. And particularly on page 7 of Appendix "G" I make the statement as follows:

" The pick-up and delivery service of the railways together with motor truck distribution has resulted obviously in lower costs of transport for competing industries in the Central Provinces. In some cases the competition between rail and motor truck is negligible or non-existent. The service places competing Maritime industries at a distinct disadvantage. Indeed it appears that this service in other territories without a corresponding basis from the Maritimes encroaches upon the purpose and intent of the Maritime Freight Rates Act. At all events the relationship in rates established by the Act is destroyed. It would appear that in some cases there exists just cause for complaint."

I just wanted to make that additional statement, and that completes my presentation.

THE ACTING CHAIRMAN: Mr. Stewart, will you proceed?

BY MR. STEWART OF MR. MATHESON:

Q. Mr. Matheson, what was the basis for the suggestion that the Intercolonial Railway was built in its present location for strategic and Imperial purposes rather than being in the centres of industry and population?

A. The source of that suggestion I think is contained in the brief of the province of New Brunswick. They go in+



that in detail. And you will find, I think, that there is a quotation in the Canada Loan Act, is that not right, Dr. Paterson?

HON. DR. PATERSON: Canada Railway Loan Act.

MR. MATHESON: Canada Railway Loan Act, in connection with the building for military and strategic purposes.

HON. MR. JONES: That is the Imperial Act?

MR. MATHESON: The Imperial Act.

MR. STEWART: Q. Is there any contemporary evidence in the negotiations or elsewhere that you are aware of?

A. Well now, I just do not know off hand. I think probably the New Brunswick Government has developed that quite thoroughly. It has always been my impression that there was some evidence in that respect and that there was some data supporting the fact that it was built for military and strategic purposes.

Q. You have not it under your hand, as a matter of fact?

A. It is also referred to in the Duncan Report.

Q. Yes, I know it is referred to. Sir Andrew Duncan says he has sifted the evidence, but I was just trying to get at what was the evidence. A. I wonder if it is contained in the Government submission, a reference to the Canada Railway Loan Act. That is the only one that I know of.

Q. The suggestion is that the railway was built as far as possible from the American Border? A. Right.

Q. For strategic and Imperial purposes. What distance did that add? A. Approximately 250 miles.

Q. Between what points? A. Well, between Montreal, I would take it, and ---

Q. And say Moncton? A. Moncton. The shortest distance was, they found, or there were three distances, or took three routes, and there was the one which now is





corresponding to the National Transcontinental, which is roughly only thirty-four miles shorter than it is around the circuitous way they built. But, the other distance was the one Sir Sanford Fleming had --

Q. That is, through the Saint John River Valley?

A. Through the Saint John River Valley connecting at Moncton down to Nova Scotia.

Q. That was as much as 250 miles? A. 250 miles in the estimate of Sir Sanford Fleming. He wrote a book or study afterwards in connection with that.

Q. Now, do you understand the Duncan Commission findings to be that up to 1912 the freight rates on the Intercolonial Railway made allowance for that fact? A. The rates on the Intercolonial Railway were, up to 1912, lower than the corresponding rates in Ontario and Quebec.

Q. By reason of the fact that the railway was built in that location? A. For military and strategic purposes and also to afford Maritime Industries and merchants an opportunity to get into the markets of Ontario and Quebec. That was understood to be the intent and purpose of the construction.

Q. Was it suggested by the Duncan Commission or elsewhere that due allowance having been made for the longer haul, by reason of the strategic and military necessities of the situation, traffic should be hauled at less than cost?

A. Well, I do not know whether you could say the traffic was being really hauled at less than cost, but it was to afford the merchants the opportunity and to take consideration of the military and strategic purposes.

Q. Yes, but after allowing for the military and strategic purposes, was it suggested anywhere or has it been suggested anywhere, that traffic should be carried at less than cost? A. I have not been able to find in



my search in connection with the history of the development and so on, any fact or any statement outside of a policy, which seems to have been the policy at the time, and whether or not they took into consideration the extra 250 miles I am not aware, but it appears to have been the policy at the time of the government. But no statement that I can find was ever made or any record was made that that was one of the fundamental reasons for it.

Q. The Duncan Commission found and reported that subsequent to 1912 the general rate structure added an increase in the Eastern or Atlantic Division of 92 per cent, whereas the general advance elsewhere was 55 per cent?

A. Right.

Q. And they recommended that the same proportions that existed prior to 1912 should be restored?

A. Right. The evidence, the figures -- I think I made a remark yesterday -- the figures that the Duncan Commission based its recommendation on, that is, the increase from 100 to 155 as compared with 100 to 192, was presented in private evidence by the railways, and the exact basis of their determination I am not aware of, although I think it was calculated on what the per ton mile revenue -- this is only my supposition from figures I checked up on my own -- it appears they must have taken the Grand Trunk Revenue per ton mile for the period 1912 and then compared the per ton mile revenue for 1925 or 1926 and took this corresponding per ton mile revenue of the Intercolonial, and then also calculated for 1926, which gave them a comparative figure of 20 per cent -- Well, 155 as compared with 100, and 192 as compared with 100. I have some figures here which show the rates. If you wish me to file a copy I will do so. It shows the comparison of the standard mileage rates in the Maritime provinces with the standard mileage rates in Ontario and Quebec, which shows definitely the increases



that is, 1907 compared with 1926.

Q. Yes, I think you cited one or two instances yesterday.

A. I cited one instance. I think there is a reference here to the preamble to the Maritime Freight Rates Act

Q. Yes, we have it quoted in full in the New Brunswick Brief, Mr. Matheson. A. Yes, I have it also. The fact that the government, through this legislation, the Maritime Freight Rates Act, has recognized the recommendation of the Duncan Commission and has stated, I am not a lawyer, but if you could look upon the preamble as a part of the document, "... and to afford to Maritime merchants, traders and manufacturers the larger market of the whole Canadian people instead of the restricted markets of the Maritimes." They recognize that in this legislation and insure the larger markets of the whole Canadian people, which has become a recognition of the Dominion Government, and I think that is quite important.

THE ACTING CHAIRMAN: At what page of the New Brunswick brief do we find this statement?

MR. MATHESON: That is contained at page 101. I have it noted also I think in my brief, the preamble and the historical aspects.

MR. STEWART: Yes. Now, the recommendation of the Duncan Commission was that a 20 per cent reduction on the rates applicable to the select territory should restore the status that existed prior to 1912?

A. That was their recommendation. If you will notice in the reading of the Duncan Commission they appear to recommend, they appeared to get the thing in immediately, as quickly as possible. They recommended, in words to that effect, as quickly as possible. And it was based on a rough estimate. As I said, it is quite difficult to figure it out. You would have to take into consideration so many factors, the traffic conditions, the volume of traffic and







so on. And that was just a rough estimate. For instance, there were a number of commodity rates from the Maritime Provinces in 1912 that were also increased, that were applicable on very different industries, they enjoyed these special commodity rates, and it was a custom at the time, from my information, that the different business people that had dealings in the markets could go and say, "We have a shipment of molasses, say, going to Ottawa and we would like to get a special rate in order to help move that particular commodity." And there would not be any refusal or the apology, "We will just help you to figure out what will help you to get into that particular market." I was unable to find evidence in commodity rates from 1912 to 1926 -- well, not to 1926 but around 1912, around that particular time, to make comparisons, but I understand that there were a considerable number of special commodity rates that applied to Maritime industries, that were dropped altogether. I know as a fact in 1912 that the changes in the westbound class rates were increased to equal the eastbound class rates, that a number of the commodity rates were placed on, old commodities were raised to the class rates that existed previously. In other words there was also a corresponding increase in the commodity rates to realign them with the increase in class rates on the westbound movement. Now, there is no definite record why the railways made this increase in the westbound rates but from the general information or the general impression created it was made on the request to the railways by interested industries in the central provinces particularly.

Q. You are unable to give us specific evidence of that?

A. I can quote from some of the evidence as submitted before the Duncan Commission, and a letter that was written



at that time by one of the railway officials, during the investigation of the Duncan Commission, a letter that was written to my predecessor, Mr. Cornell. I think I have the letter here, or if I have not got it here I can submit it to you. But the letter gave the general impression that the increases were made on complaints.

Q. This is the increase in commodity rates?

A. The increase in the rates generally. Just one moment and I will see if I have not got that letter here.

Q. Perhaps you could look it up. A. I could file that later. I have it in my records but just where I can locate it I cannot off-hand find at the present time. But there is a letter which I will file and which is also contained in the evidence before the Duncan Commission.

Q. At any rate the recommendation of the Duncan Commission was that the reduction of 20 per cent would restore the relations that existed prior to 1912, between the rates in the select territory and the rates elsewhere?

A. Elsewhere; in so far as they were able to calculate with any degree of accuracy in such a short time.

Q. Now, your claim is that by reason of competitive rates being put into effect by the railways, due to water and motor competition, that the relationship has again been disturbed?

A. Right. From 1912 to 1925 the relationship was disturbed by the increases, and from 1927 to the present time the increases have been disturbed by reductions, relatively, I would not say it applies on all commodities, but just where the competition exists. For instance there has not been a general reduction in class rates like there was from 1912, like the increase that took place from 1912 to 1927. There has not been a general reduction but there have been specific reductions.





Q. Yes, due to those commodity rates?

A. Due to those commodity rates.

Q. And it is your suggestion that as a result of those competitive and commodity rates brought about through truck and water competition, there should be again a readjustment along the lines suggested by the Duncan Commission to restore the relationship? A. Right. Now, I will give you a particular illustration of the situation that developed last year. This was not a competitive rate, it was a special commodity rate which was granted to an industry located in Montreal on shipment to Quebec market, the city of Quebec. That reduction took place during the winter, I think it was in January, I do not remember off hand, amounting roughly speaking to 30 per cent, but there was no competition through the winter in the province of Quebec, I found out that the roads between Montreal and Quebec were closed, excepting within a short distance around the cities, but there was no movement between Montreal and Quebec on this particular article. Immediately I ascertained that fact I wired the vice-president of the Canadian National, Mr. Fraser, demanding a corresponding reduction. The particular commodity was produced also in St. Stephen, Saint John, Moncton, Halifax, and Pictou. And we received a corresponding reduction of 30 per cent of the normal rate that would exist had not the Maritime Freight Rates Act been passed, and then on top of that 30 per cent of the Maritime Freight Rates Act was applied. In other words in that particular instance it was a special commodity rate, not based on competition. We received the same percentage reduction as was received in the industry located in Montreal on shipments to Quebec.

Q. Is there any suggestion in your brief that the rail-ways are acting improperly/<sup>in</sup>formulating and putting into





effect these competitive rates? A. I would not say that the railways were acting improperly in going ahead and meeting competitive rates at the discretion -- that is at the discretion. If they were powerless to do that it would just mean that it would be giving up that particular traffic to other forms of transportation and it is only natural for them to go ahead and endeavour to recoup some of this traffic. In some cases the truck companies, as I have stated yesterday, alleged that the railways are reducing the rates below reason. They have presented figures before the Chevrier Commission and also to the Senate Committee, or not the Senate Committee but the Committee considering the Transport Bill No. 31, to verify that particular contention. It is a recognized fact that the railways can implement rates to meet competition at their discretion and all the Board does is just to have those particular tariffs filed.

Q. Your position is that regardless of the cost of the haulage the railways should be compelled to put into effect rates that will restore the relationship that existed prior to 1912, and that existed after the Maritime Freight Rates Act was passed in the first instance? A. Right. Our contention is, for instance, if a competitive rate exists between Montreal and Quebec, which has been reduced by 30 per cent, our contention is that a corresponding percentage reduction should be effected on the movement from the Maritime Provinces to the Montreal market or as the case may be, whatever market may be involved.

Q. Although under the Maritime Freight Rates Act and the Duncan Commission the 20 per cent continues to apply to the normal tariff? A. Well, the point there, and I wish to make this fact very clear, if the rate was reduced between Montreal and Toronto or Quebec, by 30 per cent, that becomes the new normal rate, or the rate that applies,



I would not say the new normal, but the rate that applies between Montreal and Quebec. As soon as that rate has been established our relationship has been disturbed, that is the relationship that was created by the Maritime Freight Rates Act, and certainly after that reduction has come through then we say we want a corresponding reduction to bring up our relationships that existed previously, and then the reduction is applied, not the thirty per cent to our rate that applies at the present time, but thirty per cent to our normal rate that applied, that the twenty per cent is added on. Now, there is a considerable misconception in respect to this 20 per cent reduction. In some points it is only 4 per cent, taking the through rate as a whole, in view of the fact that the Maritime Freight Rates Act only applies on the preferred area portion, that is as far as Diamond Junction, of the through rate.

Q. Yes. Now, on your potatoe test case you carried that to the Board of Railway Commissioners and they approved of your contention that the Maritime Freight Rates Act should apply in cases of competitive rates? A. Right.

Q. But that you had to show loss or indemnification before they would grant relief? A. Right. That is they have, under Section VIII of the Maritime Freight Rates Act which reads as follows:

" The purpose of this Act is to give certain statutory advantages in rates to persons and industries in the three provinces of New Brunswick, Nova Scotia and Prince Edward Island, and in addition upon the Lines in the Province of Quebec mentioned in section two (together hereinafter called "select territory"), accordingly the Board shall not approve nor allow any tariffs which may destroy or prejudicially affect such advantages "



I would say such advantages in rates --- rates are not stated there but it is inferred ---

" ... in favour of persons or industries located elsewhere in such territory."

The Board of Railway Commissioners' decision and the Supreme Court decision did not give an interpretation of this "which may destroy", they have used the "prejudicially affect". We have to prove prejudice that it occurred --- that is any tariff that may destroy such statutory advantage in rates. That is, if a rate was reduced by 20 or 30 per cent in another territory that destroys the statutory advantage in rates. Now, under that particular section 8 the only thing the board could do was to cancel the tariffs that were complained of. We did not want a cancellation of the comparative rates of the railways, but what we did ask for was a corresponding adjustment in the rates.

Now, there seemed to have been a contradiction. Of course we contended the power to give a corresponding adjustment was under Section III of the Railway Act, of the Maritime Freight Rates Act, but there appeared to be a conflict in the decision of the Supreme Court of Canada as issued in 1933, as compared with the decision that was issued on April 21, 1937, our own case, and the other case was the interpretation case brought on a stated case by the Canadian Pacific Railway in connection with reimbursements under the Act. Chief Justice Duff made a statement in explaining, he covered the Act quite fully, and gave the following illustration-

Q. In 1937 or '33?                      A. In 1933 as contained in C.R.C. Volume 41 at page 56. The particular statement I wish to quote is contained on pages 71 and 72. He states as follows: "The key to that interpretation" - now, he says, beginning now to summarize the grounds we have







"indicated in this rather lengthy discussion upon which we think the interpretation of the Maritime Act advanced by the appellants ought to be accepted.

The key to that interpretation seems to be given by sections 7 and 8. By force of section 7 the tariffs of tolls 'provided for' in the Act 'shall be deemed to be statutory rates' and are to be deemed to be 'rates not based upon any principle of fair return to the railway for services rendered in the carriage of traffic'. Accordingly, these rates must not be taken into account in determining the 'reasonableness' of 'other rates'. By section 8, the 'purpose of this Act' is explicitly declared to be the purpose of giving 'certain statutory advantages' in respect of charges for railway transport to the 'persons and industries' in the select territory; and the Board is expressly prohibited from approving or allowing any tariffs which may 'destroy or prejudicially affect' such advantages in favour of persons or industries located elsewhere than in such select territory'."

This is the illustration, which I think is quite pertinent:

"Shippers in Nova Scotia, of apples, for example, destined for Montreal, are to enjoy the reduced rates which are to go into effect immediately on the passing of the statute (rates 20% below the existing rates); and to the extent of this reduction the Board is required to maintain a 'discrimination between'



(Railway Act, section 314) the select territory and other localities where apples are produced and shipped - the apple districts of Ontario, for example, and British Columbia."

According to our interpretation of that was that in the illustration I quoted yesterday, the reduction on apples from Picton to Montreal to meet competition, there ~~should~~ be a discrimination/maintained <sup>between them</sup> to the extent of 20% as passed under the Maritime Freight Rates Act.

Q. But the Supreme Court in 1937 agreed with the Board of Railway Commissioners, did they not?

A. They agreed with the Board of Railway Commissioners almost to the fullest extent.

Q. I notice in your brief you do not give the effect of the Supreme Court of Canada decision. You referred to the decision of the Board of Railway Commissioners but did not carry it through. The appeal was dismissed?

A. The appeal was dismissed, yes. Incidentally there has been no order issued.

Q. What is the citation in the Supreme Court of Canada?

A. I have it right here if you wish me to give it.

Q. No, just the citation, in which report? A. It is not reported in the Railway Cases.

Q. It is reported in D.L.R? A. Yes, it was issued on April 21st, 1937.

Q. Is not the way open to the Maritimes to apply to the Board of Railway Commissioners to show prejudice and have done exactly as you are asking this Commission to recommend? A. The difficulty is, Mr. Stewart, to indicate prejudice. As I said before there are so many economic factors involved. The Board of Railway Commissioners have taken a strict interpretation, or I would say legal interpretation or a literal interpretation



of the Railway Act, without giving cognizance to the purpose and intent of the Act. And you cannot blame the Board of Railway Commissioners if they endeavor to live up to the precedent created by the Railway Act, which no doubt they have in their decisions, and also to the Maritime Freight Rates Act, as they interpreted it. And in view of the fact they have not taken that liberal interpretation of the Act which we contend they should, they have kept strictly to the act as they interpret it, it places our hopes of ever getting a re-adjustment of the competitive rates to meet the changing relationship, more or less far fetched under their interpretation. If they had a direction to give a liberal interpretation to that particular act, as we think it should be, then probably our situation would be rectified to some extent.

( Page 8910 follows )





MR. STEWART: Your only difficulty here, in a way, is proving the prejudice?

MR. MATHESON: That is one of the most important things. For instance, here is your reply, "For, instance, if we do not put these competitive rates into effect, if we do not endeavour to meet the motor truck traffic or the water carriers, traffic would move by the motor truck or the water carrier; consequently, you are not prejudiced by the rates of the railway, per se, because if we did not have these competitive rates you would be in just as bad a position as you were before. Our contention is, at the present time, that there is no regulation of the water carriers or truck competition and it is quite difficult, at the present time, to say which is the rate that is really causing the breakdown in relationship. Our contention is to the effect that the time will come, eventually, when there will be regulation and they will be put on a basis where we know exactly what the other man in the other industry is paying. The relationship in rates which was established by the Maritime Freight Rates Act was nullified by the competitive reductions effected since, because of competition.

COMMISSIONER DAFOE: Your position seems to be quite clear; it is that a level of rates in, say Ontario or Quebec, no matter what the causes which affect that level are, it must be accompanied by a reduction in keeping with the findings of the Duncan Commission, that is your case.

MR. MATHESON: That is, to maintain the relationship.

COMMISSIONER DAFOE: It is a question of relationship, not of profitable rates or anything else. It is a question of maintaining the relationship found by the Duncan Commission.

MR. MATHESON: And give our industries a chance. For instance, there might be a case where a new industry



is established, and it might find it difficult to get into a market because of the distance involved and the rates which are charged. There should be some freedom allowed them in approaching the railways to ask for special rate to move that particular commodity. When they take into consideration all the factors, that is looking at the incidence of the Intercolonial railway and looking at the purpose and intent as we interpret it as well as the findings of the Duncan Commission, they should be able to give us an opportunity to put that industry into that market without creating or giving rise to complaint from other sections of the country that we are getting a special concession. It is our contention that the incidence of the Intercolonial railway should be taken into consideration.

COMMISSIONER DAFOE: Your claim is quite clear.

COMMISSIONER ANGUS: Would you go so far as to say this: Suppose the effect of your argument being accepted were that the railways did not make reductions at all and said that it is better to keep our rates as they are because if we establish competitive rates in Ontario we have to extend it to the Maritimes as well. It is not worth doing; it is better to lose the traffic. Then, you found you had a cheap water rate and road rate in the other provinces, would you go so far as to contend you should have that rate met by the railways?

MR. MATTHESON: I would say, as my argument was presented here, we are looking upon the situation and I made a comparison with the United States railroads on that point. However, the point you bring up is slightly different. You say, in the event the railways refused to reduce it and they say, "Here is our financial result if you are going ahead to reduce those rates. We may



lose money in taking the whole revenue into consideration." Our contention is that we should be able to get into that particular market as soon as the rates are known. At the present time, it is difficult to know what the rates are going to be, but when regulation comes into effect, we will know what rates are given to our competitors. We cannot move by truck.

COMMISSIONER ANGUS: You think you should have had a lower rate below the cheapest form of freight rate open to your competitor, is that it?

MR. MATHESON: We should have a rate--say the rate is between Toronto and Montreal. The railways do not put in a competitive rate. I will give you this particular illustration; there was a movement between an industry located in Ontario, shipping in to Montreal. There did not happen to be a special commodity rate on it by rail. There was an industry located in New Brunswick which was finding it difficult to compete with this particular industry, not because of the competitive rates, but because of the convenience and flexibility they enjoyed. They could just take one or two items of the particular commodity in question, take it to Montreal and deliver it to the man's door inside of four or five hours notice. Now, the man located in New Brunswick went to the railroads and told them his story. The railroad said, "Well, we cannot do anything because if we give you a special rate, we will have to give that special rate to numerous other industries located throughout Ontario, but you belong to an association to which your competitor also belongs; why not approach the association and see what stand it will take on that particular matter. This, the man did, and as a result of it, the railways gave a special rate because they felt that there was a possibility of losing that







traffic. We are not getting the traffic on that particular section because we put in that particular competitive rate. We might not get it now, but here is an industry located in the Maritime provinces, or maybe British Columbia or western Canada, they find the same condition and are in danger of losing that particular business.

COMMISSIONER ANGUS: They are doing that as a matter of policy; do you contend that they be forced to do it as a matter of obligation?

MR. MATHESON: We look at it from this angle; they should do it, not as a matter of policy, but as a matter of obligation, looking at it from the incidence of the Intercolonial railway.

COMMISSIONER DAFOE: You are aware, of course, that the case of the Ontario truck people which is being presented at Ottawa to the committee is, in effect, a representation that the railways ought not to compete with either water or truck carriers in making competitive rates, on the ground that they lose more money in making the competitive rates than they would lose if they did not try to get the business. If the railways were to follow that course, where would you come out with your representations?

MR. MATHESON: The point I raise there, is that under their obligations, we consider it was intended that we should be able to get into that particular market. I also say that there is considerable doubt--I will not say that there is considerable doubt--but the railways might make strong representations to repudiate that particular representation. I still think, of course, that the railways may go in and want to establish a rate which is a competitive rate which may be caused directly by motor truck or it may not be caused by motor truck; we still say, "Yes, even if it is caused by the motor



truck or if you do not put it in, the effect of the situation is such that it destroys the relationship. The effect of it is just like raising a tariff against us, because we have to absorb the difference which is created. We have had it very strongly pointed out in connection with the pick up and delivery services where we have to pay 25 cents; to a certain extent the cost price is quoted f.o.b., especially since it is a flat rate now. Our point is that we have to absorb it and pay for the truck charges, but now our competitors know the addition of the rates, which may be truck rates or water rates, as the case may be.

THE ACTING CHAIRMAN: Have you made arrangements for the City Of St. John Board of Trade, or are you going ahead?

HON. MR. JONES: I am quite agreeable either way. However, the government is anxious to accommodate these gentlemen who are from outside the city. Mr. McKenna, in particular, the president of the Saint John Board of Trade will be able to return again on Monday. I am quite agreeable to allow them to go on. We have interpolated a portion of other briefs and we could take up Monday morning, so that these people could get through to-day. We are quite willing to do that especially if Mr. McKenna can not be here on Monday.

THE ACTING CHAIRMAN: We have ample time, it is only twenty minutes to eleven.

HON. MR. JONES: It depends upon how long their statements may take or upon how long our arguments or questions may be.

THE CHAIRMAN: We will hear the Board of Trade.

MR. J. D. McKENNA: Mr. Chairman and Gentlemen of the Commission: Mr. Simms, who is to present our case is



not here, and it might be well if the City of Saint John were to go ahead with the presentation of its brief. After that, we will have to take our chances as to whether there is time left or not. Mr. Sims is not here, as he understood that the hearing of the Saint John Board of Trade would be this afternoon.

HON. MR. JONES: Is the City of Saint John represented here this morning?

MAYOR Murray MacLaren, Mayor of the City of Saint John, was called.

MAYOR MacLAREN: Mr. Chairman and Gentlemen: As Mayor of the city of St. John, I wish to express particular appreciation for having this opportunity to appear before your Commission. I will ask Mr. Nigel Tennant to present our brief.

MR. TENNANT: Mr. Chairman and Gentlemen; the submission of the city of Saint John has been presented already to the commission in printed form and I do not think it will be necessary to devote a great deal of time on anything further. I think almost everything we wish to say has been covered thoroughly in the brief. I would like, however, to go hurriedly through the subject matter of what has been set out in that submission.

I do not propose to devote any time to the status of a municipality, as I suppose that has been gone into thoroughly by the other municipalities particularly in the brief of the Federation of Mayors and Municipalities.

The problem of the city of Saint John is, I suppose, more or less typical of many other Canadian cities.

It has, however, some points of difference, and I will try to confine myself to stressing the particular reasons why this city should be entitled to some consideration.







The problem resolves itself, primarily, into the consideration of three factors. One is the question of the source of revenue; two, the question of expenditures, and thirdly, the matter of the growth of the city.

I could dispose of the last factor very briefly. The city of St. John, as may be ascertained from any book showing the census of the cities, has been very steady for many years. At the present time, it is estimated at 50,000 people and at the census of 1931, it was 47,000, some odd. The population has hardly increased at all, I think I might say, for the last twenty-five years or more.

The sources of revenue of the city are, principally, real estate, personal property and income, with a business tax which has been imposed since 1936. The real estate is estimated by the assessors as representing approximately 60 or 65 per cent of the revenue which is raised by the city. There is also the business tax and the income tax. I might say, in connection with the income tax--it is not in the city's submission, but perhaps it should have been--that the exemptions for income in St. John are very low. The income tax brackets of the lowest wage earners are heavily hit. I would like to read into the record what the exemptions are. These exemptions appear in section 21 of the Income Tax Act of the city of Saint John which is I Edward VIII, Chapter 95. In case of an income of more than \$1,000 and less than \$1,500, the exemption is \$400; on ~~over~~ \$1,000 and less than \$1,800 it is \$700. It can be seen that we are assessing the income of the residents of the city of St. John as heavily as we can. The exemptions in the low wage brackets are so low that even stenographers and clerks have to pay income taxes.



COMMISSIONER ANGUS: What rate did they pay?

MR. TERNANT: The rate, then, was lower, \$4.06 per hundred. I was coming to this point, but I shall deal with it now. On page 6 of the city's submission, the rates are given commencing with the year 1930. The rates start at 1930 with a rate of 2.84 per hundred and continue in the following amounts:

1931	3.24
1932	3.40
1933	3.42
1934	3.90
1935	4.00
1936	3.68
1937	4.22

The Rate for the year 1938 is 4.06"

The 1937 rate represents an increase in rate of about 40 per cent over the rate which was imposed in 1930. The sources of revenue, therefore, which are being tapped are the only sources which it is practicable for the city to tap. Ever since its incorporation, these sources of revenue have been available to the city, but since that time it has had nothing whatever added to those available sources. The result is that the tax rate has had to go up as expenditures increased. Saint John is in the same position, in this respect, as the other cities throughout Canada which face increased expenditures.

I have set out the city estimates for the year 1937-38 on pages two and three of the submission. In addition, the city is required to make annual payments to the municipality of the city and county of St. John within which municipality the city is located. The city has, really, three different expenditures. It has its





own expenditures which are purely for city purposes. It also has a special levy or not a levy, but the school board makes an estimate for the year under which the city is required to levy the money for the school board expenditures. The vocational school in St. John is also entitled to a levy. The figures in the table for 1937 total \$1,895,469.03, while the figures for 1938 are slightly lower and total \$1,828,000. This far exceeds the expenditure of the year 1920 which was \$1,490,000. In 1930 the expenditures amounted to \$1,507,000. In addition to these increases, the net debt--along with that of the other municipalities--has practically doubled that which it was in 1930. The figures as to that are set out on page 6 of the printed submission. Perhaps a word of explanation would be in order there because the Saint John harbour was taken over and nationalized in 1927. The debt for the harbour was assumed at that time so the city was relieved of that debt. On page 6 of the brief there is a table showing the debt from the year 1930 to the year 1936. In the year 1930 the debt was, \$5,209,000., while in 1936 the debt reached \$6,104,000. From this, you can see that the city has been obliged to increase its debt over that period by quite a substantial amount. At the same time, due to the inability to collect taxes during the depression years as well as other causes, the city has been obliged to run up overdrafts at the banks. This has amounted to a substantial figure, so that as a net result of the depression years and the growth of services which the people to-day are demanding, the city finds itself with a greatly increased expenditure and with the sources which have already been strained to the limit. With the present burden of unemployment which may or may





not decrease as the years go along--His Worship will have some remarks to make as to that in a moment . The burden of taxation on real estate, in particular, has been found particularly oppressive by real estate owners.

With the tax rate at its present level, real estate not only is not paying, but there is a tendency for the people who are building, or industries coming into a city, to attempt to build outside, in the county or at some other place, where they are not subject to the high tax rate which we, at present have, in connection with the taxation of real estate. One of the principal claims which the city wishes to make is that certain property which is now not taxable because it is Crown property, should bear a part of the burden which the taxpayers, as a whole, are bearing in the city. There is a valuation, and it is estimated on page 10 of the submission that there is over \$17,000,000. worth of Crown property within the city limits, and the provincial

Crown property has a value of \$851,600.. Now, that real estate within the city is enjoying the services which the city provides for property as a whole. It furnishes police protection and even education, insofar as it affects Crown employees. All the other civic services are as much a benefit to the Crown as they are, in many respects, to the individuals living within the city limits. It would seem quite proper that the Crown property should be subjected to taxation or, if not to taxation, that it should make some contribution towards the furnishing of city services. This principle has been recognized elsewhere. The Canadian National Railways had to pay \$119,000. to the province of New Brunswick and to various other municipalities. I have



taken the liberty of quoting from the brief of the city of Halifax, and in various other municipalities there are large sums of money paid annually to the municipalities by the Canadian National Railways. I noted a press clipping in which Dr. Jennings, who apparently conferred with this commission, indicated that in England, while the Crown property was exempt, the Crown made a contribution, in lieu of taxes. Speaking generally, this principle that the Crown should be exempt from the payment of taxes when the property is enjoying the services which the municipality renders--that is particularly so in the case of the Canadian National Railways, when it has a competitor within the city, namely, the Canadian Pacific Railway--it ought, then, to pay taxes.

As to relief, I do not think I have a great deal to say on that point. His Worship has prepared a memorandum concerning it which he will deliver. Relief has been administered by the municipalities of the city and county of St. John. In the earlier years, when relief was rendered, the city contributed to the county, which assessed for a portion of the relief payments. However, after 1933, an agreement was reached whereby the city took over the parishes within the city and county of St. John and undertook to pay the actual amount which relief costs them. The figures as to this appear at page 15. In 1934, the gross figure was \$153,157.32, and in 1936 it amounted to \$329,983.05.

(Page 8925 follows)



In the latter years it was necessary to bond for relief costs. It is felt that relief should be borne entirely by the Crown in right of the Province or in right of the Dominion. I notice in that connection that the Provincial Government has taken the same view - perhaps not exactly the same view as to relief but as to various social services. In the provincial brief on page 23 it is stated:

"Each parish is required to pay for the support of insane patients whose home is in the parish. Some of the rural municipalities have not been able to collect the taxes for these purposes for some years and the collection generally of municipal taxes has been most difficult. It has reached the position today where it is absolutely impossible to impose any further tax burdens in country places and the same is true largely with reference to the cities and towns. There is urgent necessity that the Province shall wholly assume the expense of the treatment and prevention of tuberculosis and the maintenance and care of insane persons. Provision must be made in the immediate future for the segregation and maintenance of the feeble minded, and for mothers' allowances, child welfare and other social services."

The City, of course, entirely subscribes to that view, but would add to it that the relief burden should also be borne by the province excepting, perhaps, as to ordinary pauperism, the cost of which cities have always borne, amounting in the City of St. John to maybe two or three thousand dollars per year.

The contention of the City therefore boils down practically to this: That expenditures have increased, social services are being rendered which are desirable, and pract-







ically unavoidable, and to-day the sources of revenue have been tapped to the greatest possible extent, - no others are available under the present City Charter and legislation. It is felt that social services and relief payments should be assumed by the provincial or Dominion Crown, and it is further felt that Crown property should be made the subject of taxation or else that a substantial grant in lieu of taxation be made; extending that latter principle also not only to the Dominion Crown property but also to property belonging to the Crown in right of the province.

I think as to the further remarks with respect to relief I will leave it to His Worship to make.

MAYOR MacLAREN: Mr. Chairman, I think Mr. Tennant has fully stated our case, but before I came up here I had a small resume made of the situation as it is to-day in the City of St. John. In 1929 relief expenditures amounted to \$3,000. and that kept doubling until 1932, when we went to direct relief it amounted to \$132,000., and it has been doubling practically each year, when in 1936 it amounted to over \$350,000. With the change in the City Government we asked the Provincial Government for assistance, and they let us have one of their men who, with the City Government, rezoned the City, and we appointed a Director of Relief, and we immediately cut our relief expenditures nearly in half. But it is still serious, and on the 30th day of July by agreement with the provincial government the municipality discontinued direct relief. The total expenditure for wages on work until the provincial government shared for the period June 30th, 1937, to April 30th, 1938, amounted to \$113,000. The municipality in addition expended \$30,000. in overhead on these works. The total assessment for 1938 covering interest and capital expenditures on relief and



employment debentures amounts to some \$89,000.00.

"The Provincial Government, on highways adjacent to the City of Saint John, last year employed some 400 men. The highways on which these men were working were being prepared for paving, and will be paved in all probability this coming summer. The number of men employed in paving work will be very small - most of this work being done by machinery, and experts employed - few (if any) of whom would be taken from the rolls of the Employment Office.

A survey of the industrial situation of this Municipality discloses that with several industries entirely shut down, the Winter Port over for the season, and other industries greatly curtailing the number of labourers employed, that there will be some 3100 men out of employment during the coming summer - quite a proportion of whom will no doubt be applying to the Employment Office for assistance unless there is a great revival in industry locally.

The payment of rentals (from which this Municipality has in the past largely abstained) is also becoming an acute problem. Landlords carrying tenants in arrears for many years now face the fact that they are unable to pay their Municipal taxes. There is a strong likelihood that many of their properties will be sold for default taxes.

It is estimated that Landlords, during the period of depression (in the City of Saint John alone) have suffered a loss of at least one-half million dollars from uncollected rentals. They have been unable to keep their properties in repair, with the result that carpenters, masons, painters and



other artisans have been deprived of the work in this connection that they would ordinarily receive.

Under the present system of employment, in lieu of relief the head of the family is paid in cash, in advance, according to the number of his dependents, and is given a second payment only when he produces a receipt from a work foreman that he has worked out the amount of his last payment at the rate of 35¢ per hour.

No clothing is being distributed.

No fuel is now being delivered.

No rentals are being paid. "

The following is the scale of assistance given:

<u>" No. in Family</u>		<u>Weekly payment</u>
1	-	\$3.45
2	-	3.15
3	-	3.50
4	-	3.85
5	-	4.20
6	-	4.90
7	-	5.25
8 or more	-	5.60 "

I might say, Mr. Chairman, that I do not think there is a City that has made a greater effort to meet this situation than the City of St. John. Personally, in the two years I have been connected with it, I do not believe that the relief situation can be met by having either the provincial or the Federal Government paying the full bill because I believe each municipality has its own problem, and if that were to be done it would simply be following the line of least resistance and the situation would continue, I believe, for all time. But I do wish to state that we must have assistance from our provincial government and from the





Federal Government. The Comptroller of the City is here, and if there are any questions as to finances he will be very glad to answer them.

THE ACTING CHAIRMAN: We will file the brief itself as an Exhibit, and you might file the Memorandum also. The brief will be Exhibit No. 367, and the Memorandum will be Exhibit No. 368.

EXHIBIT No. 367. Brief of City of St. John.

EXHIBIT No. 368. Memorandum as to Employment Situation of the Municipality of the City and County of St. John.



COMMISSIONER MacKAY: What proportion of the revenue is derived from the income tax?

MAYOR MacLAREN: Last year, 33%.

COMMISSIONER MacKAY: Do you have much difficulty in collecting the income tax? How is it collected?

MAYOR MacLAREN: We have had a lot of trouble with the arrears of taxes. Over a period of years, -- a period of about seven or eight years it amounted to over \$1,000,000. That has been due, to a large extent, to the manner in which the taxes were being collected; there was no effort being made to collect the taxes.

COMMISSIONER ANGUS: Is that arrears of income tax alone?

MAYOR MacLAREN: No, that would be both.

COMMISSIONER MacKAY: How do you collect your income tax?

MAYOR MacLAREN: Well, you simply get your tax bill and you are supposed to pay it by a certain date.

COMMISSIONER MacKAY: It is not collected as a wage tax?

MAYOR MacLAREN: Well yes, it is.

MR. TERNANT: We have a system of making a demand on the employers if the tax is not paid within a certain time, we make a demand on the employers to collect it over a period of three months, and turn it in, -- collect it from the wages and turn it in to the City Hall. In addition to that we have collectors who go around, but that does not go back further than January 1st, 1936. We had that bill passed by the legislature at Fredericton and it was not made retroactive beyond that time.

COMMISSIONER MacKAY: What method of assessment of income have you? Supposing a man is not on a pay-roll in St. John. How do you know how much he receives?



MAYOR MacLAREN: We have district commissioners who cover the City, and they take the name of the man, where he lives, and so on, and they find out where he works, and if he is not working, of course, he is not taxable.

COMMISSIONER MacKAY: Suppose he is living on his income, do you tax his income?

MAYOR MacLAREN: If he is living on his income he must make a statement; he is sent a statement to fill in.

COMMISSIONER MacKAY: But you have no means of checking up and knowing whether the statement he makes is an accurate one or not?

MAYOR MacLAREN: Well, it was, until this year, a sworn statement.

COMMISSIONER DAFOE: You have no access to the Dominion Income Tax Returns?

MAYOR MacLAREN: No. We have a provision in our Assessment Act whereby a man can be called in and asked what he put on his Dominion Income Tax Return, and asked to make the same statement, declare the same income. But we cannot check it with the Dominion Income Returns, we have never been granted that facility.

COMMISSIONER MacKAY: You really then have no accurate means of knowing whether your income tax returns closely relate to the actual income received by people?

MR. TENNANT: Not on income returns, or the invested funds at any rate. All workers receive a form which they are supposed to fill out and return to the City Hall. In addition to that, employers make out a return of wages paid to their employees. Those are checked by the Assessors. But as far as invested income is concerned we cannot check that, it is impossible.

THE ACTING CHAIRMAN: Has the City been obliged to take over many properties at a tax sale?





MAYOR MacLAREN: We started about six months ago and we have had three sales.

THE ACTING CHAIRMAN: You had one yesterday or the day before yesterday?

MAYOR MacLAREN: Yes, there is one going on now.

COMMISSIONER DAFOE: Is the City content to have the heavy proportion of school expenditure charged against real estate through the levy, or do they think the province should carry a larger proportion?

MAYOR MacLAREN: Well, our school problem is one of the most serious we have, from the financial point of view, there is no question about that. I think out of our total budget of \$1,700,000. there is something like \$700,000. or \$800,000.

COMMISSIONER DAFOE: We have had representations all across Canada saying that 50% of the education costs is about as much as real estate ought to be asked to bear. Have you any opinion on that?

MAYOR MacLAREN: No, I have not.

COMMISSIONER MacKAY: Is the total assessment of the City of St. John dropping, like certain other Cities?

MAYOR MacLAREN: Well, it dropped this year about \$100,000.

MR. TENNANT: It has dropped about \$2,000,000. over a ten year period. There has been a general revision of the real estate valuation and in the course of that revision it was simply brought down. I think that is the explanation.

COMMISSIONER MacKAY: There has not been much property fall into the hands of the City? You have mentioned three tax sales?

MR. TENNANT: In recent years the practice of the City



has not been to sell out real estate. In most instances it is practically useless to attempt to do so.

MAYOR MacLAREN: We had a firm of accountants from Ottawa making a survey of the City about a year ago, and they strongly recommended that we go ahead with the tax sales, and that is why we are doing that now.

COMMISSIONER DAFOE: What percentage of the relief costs, however they may be administered, should the municipality put up in order to insure that it will co-operate in keeping the total relief payments down?

MAYOR MacLAREN: At the present time we are paying a quarter and the province three-quarters.

COMMISSIONER DAFOE: Do you think that is about the right proportion?

MAYOR MacLAREN: Well, that is what we have been doing. I would not say that.

COMMISSIONER MacKAY: It is enough to make you feel your responsibility?

MAYOR MacLAREN: Yes.

HON. MR. JONES: Mr. Chairman, Mr. J. D. McKenna, President of the St. John Board of Trade, will speak in connection with their brief.

MR. McKENNA: Mr. Chairman, and Members of the Commission, we have with us Mr. Simms to present certain aspects in connection with the brief, and there are certain questions which were asked, and Mr. MacIntyre will answer those questions. There is another phase we would like to deal with, and I will speak to that. Mr. Simms is the first speaker.

Mr. L. W. Simms, Member of St. John Board of Trade, was called.

MR. SIMMS: It is perhaps desirable to present a few



introductory remarks. We were not quite sure as to whether you want the brief read or not.

THE ACTING CHAIRMAN: We have all read the brief, so present it as you see fit.

MR. SIMMS: Then I will read from the brief:

"It is safe to assume that, at no time since Confederation, has any group or body of men been commissioned to undertake a task so colossal, so comprehensive or so fraught with possibilities, as that upon which you have been engaged for many weeks.

That citizens and groups from coast to coast have appreciated the magnitude of the task in its potentialities, is indicated by the huge amount of evidence that has been submitted, and the universal desire to be of any possible help, which desire our Board has fully shared.

The long sincere efforts you are putting in, to throw light on our national problems, may reasonably be hoped to yield benefits in legislative enactments and sounder conceptions of lasting benefit, but to fully deal with all the possibilities of such a survey would be like attempting to remake a nation in a day.

It would seem, therefore, that the greatest promise that the occasion affords, is to more clearly establish certain fundamental principles for the guidance of our national policy and social economic co-operation.

Therefore, we have conceived it as our privilege in preparing this brief, to make it suggestive rather than exhaustive, and, while endeavouring to place before you a picture of certain economic aspects of





"this section of the country, we have ever kept in mind that we would fail to make it a true picture unless it were constantly conceived of as an integral part of the whole.

Having been honored by the request of our Board to present this brief on their behalf, it seems consistent with the conception of the major opportunity referred to, namely, to establish principles for the future guidance of our people, that we avoid detailed reference to the brief, while being ready to answer any questions that may have arisen from your perusal of it, and to touch briefly on certain fundamental factors that have a vital bearing on these principles.

The first one would seem to be that of a balanced economy, that is, such an interchange of goods and services between all sections of our Dominion, as to create the most equitable distribution of opportunity for employment in the production of primary and secondary products of agriculture, mining, fishing and industry. Such an economic balance would thus not only insure the widest opportunity to produce wealth but would involve a constant concern that such wealth be so distributed in its investment, as to foster the maximum opportunity for healthy growth of enterprise and employment in every community.

In Canada and the United States, as national entities, we have set over against one another the most striking geographical contrast that history has ever afforded. To the south of us there is the most compact geographical unit and self-sufficient economic entity that this world has ever seen. To the north of the border is the most abnormally arti-



"ficial geographical conception that a few millions of people ever attempted to weld into a nation. Success in this endeavour absolutely depends on equally artificial provisions for the maintenance of this economic balance.

These artificial provisions must be conceived, created and maintained in constant vital effectiveness to avoid anaemia in the ends, and congestion in the centre of our country.

Two simple illustrations may serve to emphasize this truth - In an eight-cylinder internal combustion engine, if but four of the cylinders are fed with the right mixture of gas and the powerful spark, the very existence of the vacuum in the other cylinders which, with equitable distribution, is conducive to power, constitutes a serious brake on the successfully functioning cylinders.

Our Dominion has a vast system of streams and great rivers which are constantly pouring their waters into the oceans, but these would soon dry up without the equally constant return of these waters in nature's marvellously balanced economy.

We have suggested certain artificial provisions that the Government might enact to set over against other artificial provisions already created by Government, such as the tariff. The sole object is to create a more equitable economic opportunity, whereby, with the least possible interference beyond these provisions by Government, each individual group and section are thus provided with the most favourable opportunity to work out their own economic determinism.



"To the degree that any section within our nation looks for undue aid or strives to maintain undue advantage, as a substitute for the same hardy enterprise and independent initiative that our pioneer forefathers displayed in bringing this nation into being out of the wilderness, we are weakening ourselves and betraying Canada.

We can never generate the perception to conceive, nor the will to maintain the essential provisions on which equitable economic distribution of opportunity must rest, save as we are motivated by the deep-seated will to share - and true sharing is a spiritual quality. Thus, we must ever be on our guard against selfishness that finds expression in undue acquisitiveness or fear of loss.

Two subversive forces are constantly at work in our midst to-day - the effort of some of those who possess material wealth to find an economic security that can be maintained only by a spiritual dynamic, and the effort of some of those who have not, to work out a scheme for the distribution of wealth, which is equally futile, because it will evaporate in the very process, without the same spiritual dynamic.

In another direction we must be on our guard - having carefully thought through the factors that will care for the grave ills in our national economy, of which we are so compellingly aware, we must have the courage to 'call a spade a spade,' and avoid doctrinaire positions and trends towards regimentation, as we would avoid the plague.

Let us pause a moment to make clear what is





"meant by doctrinaire positions and by regimentation --

Doctrinaire positions have long been the curse of all our attempts to live together, to govern each other and to be governed by our Creator.

It is superficially so much easier to formulate a point of view that pits us against our neighbor in defending it, or in trying to make him conform to it, than to see that every barrier between us starts and ends with oneself. To illustrate - There is a widespread conviction in the Maritime Provinces that such an essential and heavy commodity as cement should be made here where there exist splendid qualities of the two ingredients in close proximity to one another.

The Cement Company state that there is not enough demand in the Maritime Provinces to warrant a plant.

It is possible that these two positions may be but two points of view.

Supposing that in the spirit of your investigation, an earnest attempt is made to get all the facts that bear on the problem, into the picture -

First, there is the tariff. A primary reason for its existence is to promote domestic production. That would seem to imply production in the Maritimes or a price in the Maritimes no higher than the average in Canada.

Suppose that the Government were to adopt the suggestion, in our brief, that as a quid pro quo for the tariff, manufacturers deliver at the same price at all points in Canada. Might not the additional cost of absorbing the Maritime freight by the



"Company, change the theoretical balance sheet sufficiently to make a Maritime plant profitable?

The point is that, while each party holds the opinion referred to, a sense of injury or defensiveness is likely to exist.

A genuine desire to unearth all the constructive factors may well uncover facts that would strengthen the economic position of all parties concerned. Thus, doctrinaire positions would disappear.

A briefer reference will suffice to clarify what is meant by regimentation -

A great many of us Canadians, as we watch proceedings across the border, have an increasing sense of gratitude that we are not involved in that colossal experiment in regimentation (the by-product of doctrinaire positions) that the Roosevelt administration is carrying on.

May we not be right in assuming that our rejection of this trend at the last election has no little to do with our present favourable economic contrast?

The functioning of your Commission is an illustration of the exactly opposite trend, and one wonders if some provision for a voluntary permanent continuance of such a function might not eliminate much legislation in the future that savors of regimentation.

A few months ago I sat for long hours with a group of business men. We were striving to hammer out pronouncements on our national economic situation which, it was hoped, might serve as a beacon light to our Government and our citizens. Inevitably, we came to the one gravest problem with which our nat-



"ion is confronted - that of our railways. As far as I could gather, there wasn't a single man in that room who didn't feel, deep down in his heart, that there was but one answer to it - some form of unified management. No-one gainsaid that this was the answer, but we could not bring ourselves to adopt a resolution that would, I believe, have expressed our honest conviction. It may be that we felt the country was not ready for it, and that such a pronouncement would but crystallize the existing division of opinion. There is, undoubtedly, fear of too much centralization of power, but fear, not faith, seems to keep us from the simple obvious solution of this deficit that is throttling our economic life. It is likely to prove to be like staying under a tree to keep out of the wet, and being struck by lightning. Here again, faith is a spiritual quality.

If we, as business men, dodge the issue because of some unnamed fear, we, who have no career at stake, nothing to lose and everything to gain, by giving a bold and timely lead to the country, refuse to express our honest convictions, then we have no right to expect that a political party will risk its future by an equally honest and bold pronouncement. But, until somebody is ready to pay the price, there will be no real solution to this or any other economic problem that confronts us.

One cannot review the pronouncements of the statesmen, particularly of the British Commonwealth of Nations and the United States, over the last decade, without being impressed with the increasing





"frequency and emphasis of their statements of belief in the fact that our deepening ills are not, primarily, material or economic, but spiritual.

Never in history has there been such tragic evidence as there is to-day that democracy or true freedom is in danger of being wiped from the earth. Never has it been more evident that this true freedom that we call democracy, is simply non-existent, save as it is generated and maintained by men and women vitally committed to, and controlled by God."

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"Here again, let us illustrate: -

Every day, world navigators enter our port in Saint John. They are all absolutely committed to vital central beliefs. Among these are the north star, the magnetic north, the geographical layout of the earth, the reliability of existing charts and the integrity of the experience of those who have preceded them.

Instruments are being constantly checked in Saint John to ascertain that they are in harmony with one another in reflecting these universal facts.

Because all are committed to a common belief, they avoid collisions and shipwreck and reach their desired destinations.

There is good ground for believing that the Christian traditions have been better conserved in the heads, and, to a lesser degree, in the hearts of the people within Canada, than in any other political entity of like potential influence in the world today; So far from giving us any excuse for complacency, this fact tremendously increases our responsibility.

In the last analysis, the only strength that abides in nations and individuals alike, is in that spiritual integration that comes from really sharing all the factors that develop individual character through the opportunity to express individual initiative. Thus, and thus only, can we preserve that spiritual life whose social expression is democracy."

Mr. Chairman and gentlemen of the board, I presume, as you say, you have read the brief and consequently I do



not care to take the time to go all through it. If any questions or further information should be desired by you, sir, we will endeavor to give you further information, if there is anything you wish to ask us.

BY MR. STEWART OF MR. SIMMS:

Q. On page 7 of your brief you refer to the import and export trade of the three Maritime Provinces for the year 1866 and compare it with the figure of 1867. Was not that due largely to the reciprocity treaty with the United States in 1854, that drop in the figures?

A. I would say, sir, to that that the answer is yes, but we have felt long that if the question of Confederation had not been such a burning question at that time, great efforts would have been made to have that extended. Therefore, we gave up something we were sure of for something we hoped to get.

Q. Was there any possibility or probability that the United States would continue the reciprocity arrangement after 1866?

A. Well, we felt, Mr. Stewart, that we would have been in a position to have gone after them.

Q. Have you any evidence of a contemporary opinion to that effect?

A. No, I have not, but if you wish we could get that.

Q. At the bottom of page 9 and top of page 10 you say:

"For many years, the I.C.R. was operated upon the basis agreed upon at the time of Confederation, that is, special low rates to central Canada to be made available on application".

Where are we to find the agreement to which you refer?

A. That is a difficult question possibly to answer.

Our interpretation of section 145 of the British North America Act and the fact that the I.C.R. management was located at Moncton under federal authority did for





years grant such special rates, it has been considered by us that such a mutual understanding did exist at the time of Confederation. In fact the Duncan Commission finding was reported as follows on page 21 of that report:

"The lower level of rates that prevailed on the Intercolonial Railway system prior to 1912 is, in our view, rightly to be interpreted as the fulfilment by successive governments of the policy and pledges that surround the railway from its inception."

That is our only authority.

Q. Now, on page 15 you deal with immigration and agriculture. Can you give the Commission any indication of what lands are available for settlement in New Brunswick capable of producing crops for which you can successfully find a market?

A. Our only source of information of that was that according to our statistics there were 419 abandoned farms in New Brunswick, until 1931 there were 1625. Now, while a certain percentage of these farms may not be suitable for profitable farming, it is our contention that with the advent of good roads and motor cars that many of these farms can now be profitably operated. In other words, there are a number of those farms, especially between Sussex and the coast, which had a good deal of work done on them, they are good land, but they were so far away that in the days of the horse-drawn vehicles it was practically impossible for the farmer to get his produce into the market. There is also a vast area of virgin land that is available for farming purposes. And if I might suggest there, if the Commission desires definite information, our board would be willing to



accept the responsibility of trying to get those figures and submit them to you, if they are any use to you.

Q. Well, unless you feel it strengthens your case?

A. Yes, I understand, we may if we feel it strengthens our case.

Q. Yes. On page 19 and 20 you submit an argument in favor of anti-dumping as between the provinces?

A. Yes sir, that was rather a new idea that we had run across in the course of producing our brief. I think there are two things: What good it would do and how it could be accomplished. But we felt there are certain times of the year perhaps when certain produce has come along in other provinces much ahead of ours, when large quantities are brought in here and flood the markets, and the farmers cannot obtain the prices they should if their product was the first on the market of that particular kind. And also, if a large manufacturer has surplus goods there is a chance to dump it on the market down here which he has not been exploiting. And we felt that has been one of the things that has hurt our small businesses getting the market, and the large volume and a lower price in the home market embarrasses our people so they have to go out of business. We felt it could be enforced very easily by having all shipments into the province accompanied by an invoice duly attested and showing on that invoice the price charged is the same as the price charged in the home market under like conditions. We felt that the same invoice which is used by the Canadian Customs might be used under that system, where it has a column stating the price must be the same and it has to be attested, the shipper has to take his oath on it.



Q. Would not you be penalizing the consuming public of New Brunswick by a price of that kind?

A. If it was the same all over we do not think so. We do not think this should necessarily apply to New Brunswick, we think it is a good idea to be put into effect throughout the country.

COMMISSIONER ANGUS: Would you allow dumping within a single province?

A. I do not see how you could stop that, sir.

MR. STEWART: . I just noticed that one of the sections of the British North America Act, Section 121, says:

"All articles of Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces."

MR. SIMS: I do not look on this as a regional tariff or anything of that kind, sir. There is a similar ruling we see now that applies to vegetables particularly, the customs issues a bulletin fixing the value on strawberries or lettuce or anything coming in from the district to the south, which is really done to protect our Northern district until our crop matures. Now, that same thing applies down here, our crops mature later than they do up there, and we just want the same thing. If they sold to us at the same price they sold on their home market we would not have any kick. But if they were not prepared to do that, if it was against the law to do it, if some of our manufacturers felt they were being strangled by somebody from the outside putting in a lower price than they were selling at, then they would be welcome to go, it would be up to them to prove it, I assume, but if they could go to the Federal







authorities and say "These goods are being dumped in here and have been sold below the home market"---

Q. I suppose probably the manufacturing concerns and producers in New Brunswick are doing exactly the same thing in the markets in which they are selling?

A. Yes, I think they are, but I don't think it is proper.

Q. Then on pages 21 and 22 --- A. Excuse me, Mr. Stewart, I just had a suggestion as to how that might be done, which I would like to put into the record there.

Q. Very good? A. We felt, sir, that this invoice would accompany the bill of lading of each shipment, and where it crosses the border, the customs authority, where there is one, would simply take it in or clear the package, he would not have to examine the goods in any way like that, as there is no financial payment, duties or anything necessary for coming through a port, where there is a customs port. The goods would come right through on the bill of lading and be taken off at the station and turned in to the customs authorities.

Q. That system would require a pretty elaborate staff, would it not? A. We felt from inquiries that we have made, and I might say we have gone as far as we could without embarrassing the customs officials in asking them what could be done, that it would take a very few more men to cover it.

Q. You would have to stop at the roads? A. They would have that, when crossing the border from one province into another, the driver would have to hand the customs official his manifest. Now, where there are no large sums of duty involved, we feel that the small shipments that would trickle through without the check would not seriously interfere with the thing. We felt that the



sales tax auditors who are going around through the province could check up on that. There was another important thing we felt, and that was that particularly down here we would like to see inter-provincial statistics, and we felt under this arrangement it might furnish the material to supply the inter-provincial statistics. We felt in preparing our brief that the lack of such statistics was quite a drawback to us.

Q. On pages 21 and 22 you refer to gifts of public domain or extensions of the boundaries of Quebec, Ontario, and Manitoba forming the basis of a claim by the Maritimes. Is it not the case that that claim was submitted to the Duncan and White Commissions and approved of by the Duncan Commission and taken into consideration in the recommendations of the White Commission?

A. Mr. Stewart, would you allow me to ask that Mr. Sclanders be permitted to answer that? He has been more conversant with that particular point.

MR. F.M. SCLANDERS : No sir, we do not consider that they have. I prepared a short memorandum on the subject which, with your permission, I will read:

"Since Confederation, 985,461, or, roughly one million square miles, of the public domain have been gifted to other provinces of the Dominion; and, in lieu of such concessions the Maritimes have received no form of consideration whatsoever. The total area of the three Maritime Provinces is 51,597 square miles.

On 15th July, 1870, the North West Territories were transferred from the Hudson Bay Company, to the Dominion. The consideration was about \$1,500,000. There were then but four Provinces in the Dominion; Nova Scotia, New Brunswick, Quebec and Ontario. These four borrowed the purchase price.



Of this vast area, large portions have, at different times, been gifted to Ontario and Quebec, the total of such gifts - about one million square miles - being spread between these two Provinces, greatly extending their area. This gifted area, we understand, involves the great mineral country which has produced such enormous wealth of recent years.

From every rational standpoint, Nova Scotia and New Brunswick were equal partners in this deal. Seeing that the boundaries of these Maritime Provinces could not be extended, one cannot see why that circumstance warranted such enormous and valuable land gifts to two of the four partners while the other two equal partners receive no quid pro quo of any kind.

Probably, the fault is our own: We have never gone after the matter energetically and sincerely.

On 18th February, 1929, Premier King made the following statements: -

'If the Maritime Provinces feel that they have any claim, that claim should be considered on its merits.'

And again:

'My honourable friend' - Hon. Murray MacLaren - 'said a moment ago that he was not in a position to present their claims. For some reason or other the claims have not been put forward by the Provinces.'

By these statements the Government, doubtless, relieves itself of responsibility in the matter by placing the responsibility upon the Maritimes themselves. Nothing has been done since.





It is now twenty-six years since the matter was discussed at some length in the House - Hansard, 26th March, 1912, page 6156 - when Premier Borden said, in reference to the transfer of public domain to other Provinces, that 'the just rights of the Maritime Provinces of Canada must be taken into consideration'. Also, in touching upon the area transferred - he added: 'The territory may prove to be very valuable in the future; we all hope it will; and should it prove so, it will perhaps be more reason for giving that just and even generous consideration to the claims of the Maritime Provinces.'

In the above connection, it may be of interest to mention here that in other, comparatively recent years, we have been accused of reaching too far back into history; but, by Act of Parliament, 52 and 53 Victoria, 12th August, 1889, Ontario received very extensive territorial accessions on the basis of a proclamation issued by the Governor-General, in November, 1791, a proclamation which had seen ninety-eight summers when invoked to greatly expand the area of the Province of Ontario.

Now, this is but one of the innumerable instances involving costly inertia, on the part of ourselves, I suppose.

Surely, we have a just right to consideration with regard to the gifts of this public domain, seeing that the Maritimes, Nova Scotia and New Brunswick, were two of the four partners concerned.

On September 23rd, 1926, I handed the Duncan report to the Honourable Sir George Perley, that



is over eleven years ago, and in this report it will be remembered that Duncan recommended an interim lump sum grant until final arrangements---"

That has no bearing upon this subject, I am sorry, sir.

I might say, sir, that when Premier Borden said that if these gifts of land proved to be of exceptional value, he was probably thinking of Porcupine. The Porcupine camp was established in 1911 and at that time they promised very sensational returns. The mines that are now, as you are aware, producing such wealth in the province of Ontario are all around that section, which is a portion of these gifted lands. I might say in 1911 Nova Scotia was actually producing considerably more gold than was Ontario. I had a lot of figures with regard to that fact, and showing the production of gold and so on, but I do not seem to have them with these papers. Perhaps that would be all you want?

COMMISSIONER DAFOE: Mr. Sclanders, how do you tie in the four provinces with the solatium which was given to the Hudson Bay Company when they transferred their Rupert's Land territory to the Dominion? It is said here somewhere that the provinces bought that land. Did the provinces enter into the transaction?

MR. SCLANDERS: I did not quite catch that.

COMMISSIONER DAFOE: Did the provinces enter into the transaction at all, the provincial governments?

MR. SCLANDERS: Yes sir, the four provinces, according to our information and records, the four provinces borrowed the money to purchase this land.

COMMISSIONER DAFOE: Each province borrowing a share and putting it into a common pot?

MR. SCLANDERS: Presumably they entered into the transaction as partners, but upon what basis I do not know.



COMMISSIONER DAFOE: No, the Dominion Government borrowed the money on an Imperial guarantee and it was paid back, the debt was paid sometime in the eighties, '85, '86, that is my recollection, I am speaking from memory now, which indicated that it was borrowed by the Dominion and all the citizens of the Dominion came in on the payment back of the money.. So I really cannot see that the provinces, as provinces, had anything to do with it.

MR.SCLANDERS: I can only say, sir, that does not entirely agree with the information that we had, and the information upon which the brief of the Nova Scotia Government in 1926 before the Duncan Commission and all the other briefs are based. It is possible we may be wrong.

COMMISSIONER DAFOE: I would be extremely interested if I could find that the provinces, as provinces, were parties to the borrowing of that money. My information is very much at sea if that is the case.

MR.SCLANDERS: Yes sir. Now, here is the information which we have.

"On 19th November, 1869, the four Provinces then constituting the Confederation, jointly purchased and paid for the Hudson Bay Company's territorial rights which included the million square miles gifted to Ontario and Quebec. New Brunswick was one of these four. For those gifts to the others, we have received no consideration whatsoever."

COMMISSIONER DAFOE: I would be glad to have that point established.

MR.STEWART: I think that the actual transaction is set out in an Imperial Order-In-Council under date







of the 23rd of June, 1870 which permitted the purchase of the Hudson Bay territory by the Dominion of Canada for the sum of three hundred thousand pounds.

COMMISSIONER DAFOE: William McDougall went to England after Confederation was an accomplished fact and he carried on those negotiations. Now, when the Hudson Bay interest in British Columbia was extinguished the Imperial Government paid them £600,000 out of the Imperial exchequer and transferred the land to the colony of British Columbia, and British Columbia inherited all the public domain, in keeping with the policy which the British Government had recognized some fifty years ago, that the land belonged to the province or the colony when there was an organized government. When McDougall went to London to get the transfer of the Hudson Bay land to the Dominion he was confronted by this difficulty, that a newly organized Hudson Bay company, new people had come in, wanted much more than they ultimately got - I think a million pounds, - and the Imperial Government declined to follow the precedent which it had set in the case of British Columbia. Now, the situation was extremely critical at that moment, because in the United States the theory of manifest destiny had a very great hold upon the mind of the American public man and there was an imminent danger that Western Canada, the Prairies, would have a parallel experience to that of Texas, that the American would come in and the country would be lost. And under the stress of the urgency the Dominion paid £300,000. But that was not the payment, that was not the real payment, which the Hudson Bay Company got. I would say that that was a payment to clear title, something like that. The real payment which the Hudson Bay Company got was the permanent alienation of two sections, almost two



sections, in every township of that vast country, which they hold today, where they have not paid it, a payment which runs into millions and millions of dollars, and that recourse was a deduction from the public domain which ultimately was either transferred to the province or accounted for. In the Dysart Commission and the Turgeon Commission, when they were estimating the alienations for which the provinces thought they had claims, they took in the alienations to the Hudson Bay Company, because they were eventually. So the Hudson Bay Company got compensation at the ultimate expense of those provinces of a sum which, compared with the £300,000, was immensely greater.

( Page 8955 follows )



MR. STEWART: I just wanted to refer to pages 15, 16, and 17 of the report of the White Commission to show that this matter was dealt with by that Commission.

MR. SIMES: We would like, sir, to have Mr. McKenna present a small report in connection with our brief.

MR. McKENNA: Mr. Chairman and Members of the Commission: My presentation, I am very glad to note, is to be given some consideration. As this Commission is charged with an investigation of the tax structure of Canada, we propose to present, at least the St. John Board of Trade would like to present one aspect of the management and operation of the Canadian National Railways in this section of Canada. It has been pointed out to you previously that the deficit of the Canadian government system last year was something over \$42,000,000. Possibly it has been suggested to you that \$20 or \$21 million had to be provided for by way of capital expenditure. In addition to that, there is the interest on the debt for which no public financing has been undertaken and upon which capital amount the Dominion government must meet interest charges each year. This makes a total charge imposed on the railway of something over \$80,000,000. I think the commission will accept as sound that good railway construction always seek the seaboard by the shortest possible route. I think that is established by the fact that the Canadian grain movement moves from the west by rail to Fort William and Port Arthur and is then moved to the Atlantic seaboard whenever practicable by steamers. It is taken by water over to the elevators at Midland, Collingwood and other points. It enjoys the water rate to Montreal, wherever possible. There is very little movement by rail over the Canadian Pacific Railway or the Canadian National Railway to the





Atlantic ports from the west. The point I am making is that in following out that practice it is following a sound transportation practice, recognizing the economy factor through the use of water transportation rather than land transportation.

When the Grand Trunk Pacific bill was brought up, I happened to be a member of the Press Gallery, at that time, at Ottawa. The terminal of that road was fixed at Moncton. This was for political reasons and was to have fixed a balance between New Brunswick and Nova Scotia. However, in spite of that fact, the Grand Trunk Railways secured certain land in the port of St. John, around Courtney Bay at which point it established its terminals. In addition to that, the Dominion government, the Department of Public Works--this was before the Harbour Commission--undertook very heavy operations in dredging. The only harbour was established on Courtney Bay which was to be used by the Grand Trunk Pacific Railway. Unfortunately, that railway went into bankruptcy and the plan had to be abandoned.

Now, at the present moment, the Canadian National Railways is not making use of its shortest haul to the Atlantic seaboard. The basis of this case, I think, it is to be found in the recommendations of Sir Alexander Gibb in his report to the Dominion government. On page 140, section 280, he says:

"The Canadian National Railways, by their present routing, have to carry traffic from Montreal to Saint John. 260 miles further than by the Canadian Pacific Railway route. with the result that greater operating expense and longer time for delivery are unavoidable, and both are a serious



"handicap to the adequate service of the Port of Saint John by the Canadian National Railways." Paragraph 281 of that report says:

"In my opinion, the Canadian National Railways should run direct to West Saint John by means of the Valley Line from Fredericton. This, I was informed, involves the construction, or reconstruction, of a bridge and the relaying of a considerable portion of line between Fredericton and Saint John. It would, on the other hand, effect a valuable saving in milcage and provide a satisfactory route between Montreal and Saint John that would permit of more economical and more rapid traffic operation."

The adoption by the Canadian National Railways of the suggestion by Sir Alexander Gibb would necessarily result in an endeavour to haul heavy trains from Montreal to Saint John. In this line, there used to be a light duty bridge. By act of providence, Mr. Chairman, that bridge went out some few years ago and there is now a heavy duty bridge established at this point which, I am informed, is capable of handling the heavy locomotives and equipment which would be necessary. In this manner, this argument has been removed, and in addition, there has been a heavy duty bridge placed at Oromocto. Here is the picture, as I see it. Sir Alexander Gibbs says at paragraph 283:

"The Port of Saint John holds a very important place in the national transportation system. Although it has a longer rail haul from Montreal than either Portland or Boston, it affords the only means of meeting the intense competition from the more favorably placed United States Atlantic





ports on terms that are not wholly disproportionate from the economic, business and traffic points of view."

Now, we have had the question impressed upon the Canadian National Railways concerning the advisability of adopting Sir Alexander's recommendation. This route is suggested as being a route, "not wholly disproportionate from the economic, business and traffic points of view." So far, we have not had very much success. It has been urged that it is cheaper to haul a train the longer distance, due to certain railway reasons, which I do not think I can follow. However, I am glad to say that that defence has now been abandoned, and before the standing committee on railways and shipping on April 27, the president of the road, Mr. Hungerford was asked as to why the longer route had been followed. He replied that the reason was in regard to the shipper of the goods choosing which port he wanted them taken to. This reason is based upon section 41 of the Grand Trunk Pacific Act. At that time, when this railway was projected, the Grand Trunk being in possession of its harbour at Courtney Bay and other outlets on the north Atlantic, there was fear expressed by some members of parliament that politics could be thrown around the operation of that road, particularly in view of the fact that the Dominion government had a very large investment of its own in that operation. For this reason, clause 42 was adopted which provided--I will not read the entire Act--but the effect of it was that all freight originating on lines of the railway passed through Canadian ports unless specifically directed. It is on that section, adopted in 1903 or 1904, I do not know whether it was adopted that year or the year of the amendment to the bill, but this is the peg upon





which the Canadian National has chosen to hang its hat. I suggest that is the reason why it has chosen to take the traffic over the longer route. They suggest that it is due to a conspiracy on the part of their customers who insist upon the use of the longer route. I am very glad, however, that the first defence has been abandoned.

I want to file with the commission a map which is a copy taken from the official map of the Canadian National railways and which is drawn to scale. It shows the distance from McGivney to Halifax as 285.1 miles and the distance from McGivney to Saint John as 118.5 miles. This would be a saving of 166.6 miles to the Canadian National by the use of the Port of Saint John. We maintain, in Saint John, that a lot of this traffic at one time flowed through the Port of Saint John. We, in company with others interested in Maritime ports put on an intensive campaign in favour of diverting Canadian traffic through purely Canadian ports. We went to Ottawa and we took the ground that all Canadian traffic so far as possible, should flow through Canadian ports and in that we included Vancouver, Montreal, Quebec, Saint John and Halifax as well as Prince Rupert. It was a national campaign and it bore fruit. We had representatives from Saint John go as far as Vancouver, We went to Winnipeg and other wheat shipping centres. We were a little discouraged at the time because, not only was the port of Portland retained but the Canadian National Railways opened up another port in Connecticut, the port of New London. Through this port, most of the automobile export trade flowed. Whether we were right or whether we were wrong, the situation of the New London port was most irritating. The Canadian



National-owned vessels left the port of Halifax where they discharged any ballast and went to New London, where they took on cargo of automobiles from General Motors and the Ford Company. These cargoes were taken to South Africa and many other points. We called upon Mr. Wallace Campbell, one of the Ford Company executives. I want to pay this tribute to Mr. Campbell, that as soon as he found out what was happening, he informed the Canadian National Railways that the Ford Cars must be exported from a Canadian port. I might say, to Mr. Stewart, that as a result of that a large amount of the tonnage of automobiles shipped by Ford went through the port of Halifax. At any rate, this port of New London was cut down and the business went through Canadian ports. A little later something occurred in regard to the port of Saint John which made us think that we were beginning to feel the wrath of the officials of the Canadian National Railroad. At that time, ships owned by a New Zealand company had been operating out of Saint John for a number of years. Then, the steamers of the Canadian Government Merchant Marine were put in competition against the New Zealand line. The rates were cut to the bone and there was no profit in the operation. As a result of this, the New Zealand company withdrew in the year 1927. The Canadian National Railways operated through the port of Saint John for the balance of that year, but in 1928, they took up, bag and baggage and moved to Halifax. They have operated out of the port of Halifax and they haul the freight necessary to bring about that transaction beyond Saint John to Halifax a distance of 166.6 miles further. They receive no returns for this. Then, something else happened about this time.





The accommodating rate, the differential in favour of Saint John which amounted to one cent a hundred was cancelled voluntarily by the Canadian National Railways. This placed the port of Halifax on the same basis as that of Saint John, although the distance via the Grand Trunk Pacific was 166 miles farther and if the Canadian National was used, 207. We, in Saint John, did complain that this was unfair and that the traffic should not have been taken away. In Saint John we have not a complaint as against Halifax getting the traffic, but we do complain that it was unfair treatment. It was unjustified as indicated by Sir Alexander Gibb and contrary to sound economic and business principles. We started in to have that amended and we interviewed Sir Henry Thornton. We desired to have the Canadian Merchant Marine and that tonnage returned to the port of Saint John. We were very hopeful; in fact, we had been promised a recommendation which would be put into effect in January, of the year 1930, I think it was. Then, the change in government came and the change in management of the Canadian National Railways in 1931. Up until 1937 we did not receive any relief.

In 1937 the boats were sold; the Canadian government merchant marine was purchased by the Manx line. This company was composed of the New Zealand company which formerly operated out of Saint John as well as Cunard interests. The heads of the Canadian National Railways said that the city of Halifax should be made the terminal, that was in the terms of sale; Judge Fullerton said that it should be made the sole terminal of these steamers. We protested and we finally got the government to change that to Maritime ports. We were left out of things during the first year of operation, but we insisted again,





and succeeded in having returned to us the service which was lost about ten years ago. I just refer to that because there are other cases of the same character, on the Canadian Pacific Railway line and other lines. Now, the point I am making, Mr. Chairman, is this; there has been definite antagonism against Saint John for the reasons which we have set forth. I would point out to you that it has been almost impossible to secure from the Canadian National Railways what we were promised by the terms of the C.N.R. Commission. Then, we found that we could not get a general mill rate, and I used the figure of ten mills. I was speaking with a man in the Canadian National Railways and he said that ten mills per ton mile was a fair rate; it was approximately the cost of operation.

Then, another thing we have been unable to secure is the tonnage affected and carried over this long haul. I might say this that the shorter haul from McGivney Junction rather than the long Intercolonial haul--the figure was mentioned the other day before the Commission, the Railway Commission, by Mr. McPhee, the member for Saint John. He suggested seven hundred and fifty thousand tons. Seven hundred and fifty thousand tons hauled that distance means approximately \$1,250,000. a year. Added to the voluntary reduction, it wipes out the differential of twenty cents a ton, which is a considerable amount voluntarily surrendered by that railway.

We think, Mr. Chairman, that the recommendations of Sir Alexander Gibb should be carried out, at least that part of the tonnage which ~~formerly~~ accrued to the port of Saint John should be given back. We think it is unfair that it should have been taken away from



the Port of Saint John, particularly when the taxpayers of Canada have to meet that burden each year. It has been the practice to bring down at the end of each session, items showing the cost of the Maritime Freight Rates Act to the taxpayers of this country. It has also been the practice to select from a division of the Canadian National Railways the deficit of the Intercolonial or eastern division. No other deficits on any other part of the line are segregated. We would say, Mr. Chairman and members of the commission, that so far as the Maritime provinces are concerned, there is no deficit, the deficit is quite unnecessary and any deficit which exists in the Maritime provinces so far as the Canadian National Railways is concerned, these deficits have been self-inflicted. They can be removed if the advice of Sir Alexander Gibb is taken.

Another reason why I think this move of handling the business in this manner is unsound, is that presented to the members of the central harbour board by the Halifax board of trade. This presentation was made in connection with the recent advance in charges for port dues and in that it is suggested that most of the tonnage handled in Halifax is in small quantities, quantities down to 200 tons. It is handled by ships calling there for their cargo. My suggestion is that such a policy on the part of the Dominion government is not going to cure our ills, but, rather, we should have a policy such as that adopted in the lake ports to encourage the handling of Canadian tonnage. It is better than encouraging the handling of Canadian tonnage by boats which merely call at our ports, pick it up and leave. We should devote our attention in this country to the building up of a





Canadian merchant marine such as has been developed on the Great Lakes. When the Canadian National Steamships were sold to the Manx line, there was a provision in that contract which required these boats to be provisioned in Canadian ports, repaired in Canadian ports, and certain attention must be given to Canadian crews, before the government would sell those boats. I think if we are ever going to take advantage of our geographical position on the Atlantic and the Pacific, we should go back to the policy of the government in 1902 in regard to lake ports and build up a merchant marine which would be of tremendous advantage to Canada.

I want to acknowledge my indebtedness to Commissioner Dafoe for the section that I am going to read which refers to Sir Clifford Sifton, who, in my judgment, was one of the outstanding men in this country, as an administrator and a man who made a very great contribution in his own particular sphere in connection with the Canadian government. He is speaking about the merchant marine on the lakes, in connection with a proposal made that certain advantages be given American merchant marine, at that time, in order to make cheaper transportation available. He says in effect that:

"The methods that must be adopted to attract tonnage, to keep the ocean rates sufficiently low to enable Canadian ports to compete with Boston, Portland, New York and Baltimore. Whatever was necessary to do to attain these ends he would do.

He knew quite well that the shorter haul to the United States ports, and the greater availability of tonnage at these ports due to larger volumes of trade, gave them immense attractiveness





"to Canadian shippers and Canadian carriers; but he would not admit that the fight was hopeless. Given the necessary public backing the Canadian channels of transportation could be established.

The advantage it will confer on the Maritime provinces can hardly be over-rated. It will make Halifax and Saint John the Atlantic seaports of half a continent; it will insure to Halifax, ere long, the establishment of a line of powerful steamers running in six days from her wharves to some near point on the west coast of Ireland--and it will bring a constant stream of passengers and immigrants through those lower provinces that never otherwise would come near them."

Mr. Chairman and Members of the Commission, I suggest that a mistake has been made in connection with the lines, and that a survey be made to show the distances and so on of the Canadian Railway hauls. My suggestion is that in view of the fact that a large amount of money can be saved annually, such a recommendation to the Canadian National Railways would be in order. I wish to thank you.

THE ACTING CHAIRMAN: You have placed the commission in quite a delicate and embarrassing position. I do not know whether we have jurisdiction upon these questions, but it seems you do not leave very much to Halifax. We heard from the government yesterday, not at great length, that every aid should be given to the Maritime ports, and I think Halifax is considered as one of the seaboard ports.

MR. STEWART: Not since yesterday.

THE ACTING CHAIRMAN: But you will admit, that it is quite an embarrassing position.

(Page 8971 follows)



COMMISSIONER DAFOE: Mr. McKenna, suppose there is a rail shipment of wheat over the Canadian National, does it automatically, inevitably and unavoidably go to Halifax?

MR. McKENNA: No, the grain trade does not go to Halifax, most of the grain going through the Port of Halifax is, I think, over the shorter route, the Canadian Pacific. It has 260 miles advantage there, and the grain largely goes through it. There was some grain going through Halifax but that has been discontinued.

COMMISSIONER DAFOE: The Canadian National gets no grain going to any of the Maritime Ports?

MR. McKENNA: The Canadian National hauls some of this grain down to Moncton and then into St. John, but they do not use this route, and I might say that there is one section in this route, 34 miles, between here and McGivney Junction that would have to be strengthened; I do not know what the term is, - re-ballasted, and so on. The Valley Railway from here to St. John is built on a seven-tenth grade to conform with the Grand Trunk Pacific, and the Canadian National have a contract between Westfield and St. John of \$2.00 a ton mile, for hauling trains. That is, it would cost the Canadian National Railway \$25.00 to haul that train from Westfield to St. John, and they operate at their own cost, at something like \$3.00 a ton mile. I might say that that contract was made with the provincial government when the provincial government owned that line. I think the switching charges at St. John are lower than those at Halifax, so that from that viewpoint that small rental charge would be of very little account.

COMMISSIONER DAFOE: You think that the <sup>law that</sup> ships will go as far inland as they can to get freight ought to operate more fully than it does in the case of St. John?



MR. McKENNA: It does operate. We do not get any summer tonnage, Mr. Dafoe.

COMMISSIONER DAFOE: That is, of course, the explanation why ships go to Port Arthur; that is, a tendency which in the long run cannot be offset even by the equalization of rates. You cannot offset the other factors, the factors of time, cost, and distance.

MR. McKENNA: Well, as a matter of fact we move a lot of products around St. John and Halifax to Port Arthur and Fort William now, and there is a proposition to regulate those rates, and the three provinces appeared at Ottawa in opposition to that feature of Bill 31. We recognized the importance of water traffic and we certainly recognize the great advantage to the west, for instance, of using water transport. My point is that wherever railways have been able to connect with the ocean the view has been to get the shortest possible route, and I think this route is the only one in Canada that does not live up to that.

COMMISSIONER DAFOE: That explains, of course, why the St. Lawrence gets all the traffic while it is open.

MR. McKENNA: Yes.

COMMISSIONER DAFOE: You mentioned the Grand Trunk Pacific has having been personally acquainted with the movement. Of course, that is in your time and mine, Was not that whole project an attempt to deliver, by rail, grain to the Maritime Ports?

MR. McKENNA: Yes. As a matter of fact, the gradient coming East was designed for that purpose, but I think you will agree they tried to make water run uphill.

COMMISSIONER DAFOE: The original proposition out of which the whole scheme grew was a request by the grain growing provinces to be allowed to build a railway from North Bay







into Western Canada?

MR. McKENNA: Yes.

COMMISSIONER DAFOE: And it was felt that that would not be desirable because it would mean the Grand Trunk would deliver its freight to the American Ports , so that the statesmen took it in hand and they took it first to Quebec and then to Moncton, and I recall it very clearly because I think I helped to distribute the information, if I might say, - the argument, that the grades would be so good and the curves so non-existent that trains of wheat would start from the West and come down over that all-rail route, and the lakes and canals could not compete with them. On the strength of that, it was really an attempt to fulfil an obligation to the Maritimes, and Canada spent a good many millions of dollars. But, as you say, it was an attempt to make water run uphill.

MR. McKENNA: You did not, by any chance, write any of the arguments?

COMMISSIONER DAFOE: Well, I am not making any confession as to the culpability of my contribution.

HON. MR. JONES: Mr. Chairman, Mr. Phillips of the Fredericton Board of Trade is here, if you will hear him for a few minutes.

THE ACTING CHAIRMAN: The brief of the St. John Board of Trade will be marked Exhibit No. 369.

EXHIBIT No. 369. Brief submitted by  
St. John Board of  
Trade.

THE ACTING CHAIRMAN: We will hear you now, Mr. Phillips.

Mr. R. L. Phillips, representing the Fredericton Board of Trade, was called.

MR. PHILLIPS: Mr. Chairman, and Gentlemen, the Fredericton Board of Trade, in supporting the presentation of the St. John Board in this matter, is not acting so much in their



local interests as we believe in the interests of every resident of Canada whether he be a direct or an indirect tax-payer.

"There has been some expression of opinion in our community that the routing of through Western Freight to St. John via McGivney and Fredericton would be detrimental to the interests of Fredericton and Devon."

I was walking down Queen Street one day and a young business man, for whom I have a very high regard, called me into his office and told me he had recently had a call from an employee of the Canadian National Railway, a resident of Moncton, and that this gentleman had frightened him, - he said "My friend, after listening to him I could see grass growing in the streets of Fredericton. If a large amount of freight is routed in the future as it should be, from the West via McGivney and Fredericton to the sea it may not mean a large increase in the number of trainmen residing in this vicinity, but inasmuch as all the services which we are enjoying now from the Canadian National must be maintained, there should be no diminution in the number of trainmen living in Devon, and because of our exceptional educational and other advantages in Fredericton I maintain that trainmen who are running through here fairly regularly, some of them will live at Fredericton instead of moving to St. John or McGivney, or other places where the advantages are not so marked. There will be other advantages. For instance, if this road here is carrying heavier traffic they will require to employ more section men, or men in the shops, and certainly the advantage in rebuilding any of the section of the lines will be a marked advantage at this time when there is so much unemployment.



However, it is not because of these minor local advantages that we are speaking, but because of what is for the general good of Canada's many problems, probably the chief of which is the Canadian National Railways. Mr. McKenna has pointed out to you the actual operating deficit last year was over \$42,000,000. However, add the indirect interest and other charges and you have the sum of about \$5.00 or \$6.00 per capita for every man, woman and child living in this Dominion, which they are paying. This situation has been bad for years, so bad that in 1931 the Honorable R.B. Bennett, then Premier of Canada, went casting about for advice as to how to ameliorate the situation, invited Sir Alexander Gibb to come to Canada. Alexander Gibb ranks as the foremost authority in Great Britain, which probably means the world, on Port facilities and planning. In his report, page 140, paragraph 281, he says:

"In my opinion the Canadian National Railways should run direct into West St. John by means of the Valley Line from Fredericton. This, I was informed, involves the construction, or reconstruction of a bridge and the relaying of a considerable portion of the line between Fredericton and St. John. It would, on the other hand, effect a valuable saving in mileage, and would provide a satisfactory route between Montreal and St. John, that would permit more economical and more rapid traffic operation."

No move was made to implement his suggestion. Then two years ago, in the spring of 1936, the province intervened, - the old bridge was removed. Since that time the Canadian National Railways, acting with reasonable promptness, have replaced it with a bridge which will be officially opened in a few days. Also, during the past winter, they have re-







conditioned the bridge over the Valley Line at Oromocto, which is placing, so far as bridges are concerned, the line between here and St. John in very good shape for heavy traffic. On February 1st, of this year, Mr. John E. Sayre, Vice-President of the St. John Board of Trade and myself, interviewed Mr. S.J. Hungerford, President of the Canadian National Railways at Montreal. We have felt that the line from here to McGivney Junction should be rebuilt and reconditioned before it would be in a condition to carry heavy traffic; although that was not mentioned by Sir Alexander Gibb in his report, but possibly Sir Alexander had the same opinion which I had regarding that section. I first asked Mr. Hungerford that an appropriation be made this year for reconstruction of that line between here and McGivney. His first answer to that was that they could not get a big appropriation, there were too many other sections asking for it. I said, split it up and spread it over a period of two or three years. He said, the line now is fit to take care of that traffic. Mr. Sayre questioned him on that, and since I have come home I have discussed the matter with two responsible and competent officials of the Canadian National Railways. The first one said "Mr. Hungerford is right" and the second one said "He is entirely wrong".

On May 12th, while giving evidence before the Senate's Special Committee on Railway conditions in Canada, Mr. S.W. Fairweather, Director of the Bureau of Economics of the Canadian National Railways, stated that the Canadian National Railways' line from Quebec to the Maritime Provinces was the most economical route from Central Canada to the Maritime Provinces. As alternatives the C.P.R. line through Maine was shorter but more costly because of higher grades and the Inter-colonial line was much longer and incapable of



handling the traffic.

Now, Mr. Chairman and Gentlemen, we have proven by Mr. Fairweather that the line from Quebec to McGivney is the best of the three lines to carry traffic to the Maritimes. Mr. Hungerford's statement is that the line from McGivney to Fredericton is capable of carrying heavy traffic. The bridges having been replaced, the only thing that remains to be done is to recondition the line between Fredericton and Westfield. This road is of comparatively recent construction, and was constructed to the standard of seven-tenths per cent grade, and I believe only a moderate expenditure would be required to bring it up to the required standard. And that moderate expenditure is certainly justified in view of the tremendous savings which can be made. Of course, this routing makes necessary the use of the C.P.R. rails from Westfield to St. John but inasmuch as the Canadian National Railways have, I understand, a contract to use these rails for the merely nominal charge of \$25.00 per train-load, the rental may work to as good, or even better advantage, than owning and operating their own road for this short distance.

"On April 27th, appearing before the standing committee on Railways and Shipping at Ottawa, Mr. Allan J. McAvity, M.P. for St. John-Albert in referring to the goods being hauled past St. John an extra distance of 168 miles, Official Report, Page 109, asks:

Why should the extra train haul be carried with apparently no advantage to the Canadian National Railways? That is my question.

Mr. Hungerford replied: 'We carry them to the port that the people want them taken. We have no control of that situation.'



"Mr. Howard replied: 'We carry them to the port the shipper indicates.'"

The Canadian National Railways employ a large, competent and energetic body of freight solicitors. I have always believed that a successful and efficient freight solicitor must need study the interests of his customers as well as those of his employer. He must in this case think of his employer as the people of Canada, - they owning the road and meeting the deficit. Therefore, I believe when these freight solicitors are selling transportation from the West to Maritime Ports, and when it comes to the time to help their customers select the Port of export for the goods which they are routing, that they should study the advantages of each available port, not forgetting to mention the savings which can be effected from a mileage standpoint by making use of the Port of St. John.

If this policy were to be adopted, Gentlemen, I do not believe in another year that Mr. McAvity would have occasion to ask the question which he did ask on April 27th, last.

In conclusion our suggestion would be, - and I hope it will meet with the approval of this Commission - that they recommend the Fredericton and Westfield section of the St. John Valley Line of the Canadian National Railways be immediately reconditioned in order that it may carry this traffic, which would carry out the recommendation of Sir Alexander Gibb.

THE ACTING CHAIRMAN: Thank you Mr. Phillips. That concludes the representations of the Board of Trade. Mr. Jones,

HON. MR. JONES: Mr. Chairman, I desire to introduce three or four tables as Exhibits. They have relation to the submission made in part 2 of the Brief. The first one





is a statement of investment included in Canadian National System in respect to railway lines in the United States, which excluded from the C.N.R. lines, from the report of the Dominion Bureau of Statistics as of December 31st, 1936. The second is an extract from Hansard of Monday, March 28th, 1938, in respect to the cost of the canals, and the locations. The third is the Dominion Expenditures for Construction and Maintenance of Canals. The fourth is a statement taken from the Financial Times as to trade through Maritime Ports since Confederation, and a letter from the Editor-in-Chief of the Times explaining it, and a Memorandum attached.

Now, I do not think at the moment I have anything to add to our submission under Part 2.

THE ACTING CHAIRMAN: I think Mr. Stewart has some questions to ask. We will sit this afternoon, if it is convenient to you, from a quarter past two to a quarter past three.

MR. STEWART: Mr. Jones, would you indicate where the Commission might find the Confederation Agreement to which you have referred. Is that to be found in the London Resolutions or the Quebec Resolutions?

HON. MR. JONES: In the London Resolutions, Mr. Stewart.

MR. STEWART: I assume it is admitted that at that time the provinces of New Brunswick, Canada, and Nova Scotia, did not have treaty-making powers?

HON. MR. JONES: I am not prepared to admit even that, but I do say they had power to enter into a contract or agreement at that time.

MR. STEWART: Or at any rate to express their desire?

HON. MR. JONES: Yes, to go that far and to make an agreement.

MR. STEWART: But the entire power of giving effect



to any arrangements was vested in the Imperial Parliament at Westminster.

HON. MR. JONES: I cannot even admit that, because as between the provinces, I think the provinces might have at that time made an agreement about fishing, about certain transactions between the provinces; I think they could have made agreements and to my mind that is what they did.

MR. STEWART: Are you suggesting that they could have brought about Confederation without the action of the Imperial Government?

HON. MR. JONES: I would not go that far, no.

MR. STEWART: Do you suggest that the Confederation Agreement was or was not implemented by the B.N.A. Act?

HON. MR. JONES: To a certain extent, yes, and to a certain extent, no.

MR. STEWART: In what respect was it not implemented?

HON. MR. JONES: In this respect - to make the answer shortly, I might have some further explanations in answer to other questions, - but the Act of British North America did not particularly provide that the government of Canada should perform all of the services and obligations which were included in the London Resolutions to be performed by the Dominion, and these were, the development of the trade, principally, - principally the making of improvements required for the development of trade between the Great West and the Seaboard.

MR. STEWART: That is, as a matter of fact, the only one, is it not, that you claim was not implemented or carried into legislative effect by the B.N.A. Act?

HON. MR. JONES: That is the principle one, yes, that provision about the development of the trade. But the B.N.A. Act, as I would like to point out, perhaps in answer to some other question, was silent also about another very im-



portant consideration; that is, it was silent about the proposed or agreed pledge of the Imperial Government to guarantee the Bonds of the Dominion of Canada in the construction of that road - I am putting those words in myself - if the Dominion cared to take advantage of that guarantee.

MR. STEWART: Well, that would be a different agreement to which the Imperial Government was a party, would it not?

HON. MR. JONES: That would be an agreement or understanding between the provinces and the Imperial Government. At that time there was no Dominion, when that pledge was given.

MR. STEWART: Possibly between the people attending the London Conference and the Imperial Government?

HON. MR. JONES: Well, I cannot dissociate the people attending the London Conference from the provinces, because the basis of our intention is that the provinces were carried to London by these delegates, and there agreed as provinces. I cannot separate the two.

MR. STEWART: The communication with the North Western Territory, to which you refer, was Number 66 of the London Conference Resolutions?

HON. MR. JONES: Yes.

MR. STEWART: Number 67, the next following Resolution, was that the sanction of the Imperial Parliament shall be sought for the union of the provinces on the principles adopted by this Conference?

HON. MR. JONES: Yes.

MR. STEWART: Is not the fact that Number 66 was dropped from the B.N.A. Act evidence that the Imperial Parliament did not approve of it?

HON. MR. JONES: Not at all, because it was a condition that would not properly be the subject of statutory







enactment.

MR. STEWART: Number 65, dealing with the construction of the Intercolonial Railway, is somewhat different.

HON. MR. JONES: That is true, because it was a positive direction upon the Dominion to do that work, and in 66 there was a provision that as soon as finances would permit - what I would submit is that 65 might very properly be a subject of legislative action and 66 would not be, because there was uncertainty.

MR. STEWART: Would it not be damaging to your view of the Confederation Agreement if it were found in the B.N.A. Act that there were distinct provisions which were not covered by the Resolutions? I do not mean merely verbal, or matters of machinery?

HON. MR. JONES: I would have to see what agreement you speak of.

MR. STEWART: I refer particularly, in the first instance, to section 121 of the B.N.A. Act which provides that all articles of the growth, produce, or manufacture of any one of the provinces shall, from and after the union, be admitted free into each of the other provinces. As far as I can find that is not in the Resolutions of the London Conference, but it is in the B.N.A. Act.

HON. MR. JONES: Yes. Well, that is quite possible; it does not affect our position as I see it. It was simply in the London Resolutions that the Imperial Parliament should be requested to incorporate the Dominion upon the principles contained in those Resolutions, and naturally it would be implied without having been stated.

MR. STEWART: Now, Mr. Jones, I would like to call your attention to two sections of the Act itself, - the British North America Act. Section 3:



"It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a Day therein appointed, not being more than Six Months after the passing of this Act, the Provinces of Canada, Nova Scotia and New Brunswick shall form and be One Dominion under the Name of Canada; and on and after that Day those Three Provinces shall form and be One Dominion under that Name accordingly."

HON. MR. JONES: I quite appreciate that. That is only a name, it is not a country.

MR. STEWART: Then Section 4:

"The subsequent Provisions of this Act shall unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the Day appointed for the Union taking effect in the Queen's Proclamation; and in the same Provisions, unless it is otherwise expressed or implied, the Name Canada shall be taken to mean Canada as constituted under this Act."

Then Section 5:

"Canada shall be divided into Four Provinces named Ontario, Quebec, Nova Scotia and New Brunswick."

I am suggesting and asking you whether it is a proper inference to be drawn from that language that the Provinces as constituted since July 1st, 1867, are not the provinces that existed previously?

HON. MR. JONES: Our position is that the provinces are the provinces that existed previously, and the Privy Council sustains our opinion.



- EXHIBIT No. 371. Statement of Investment included in Canadian National System in respect to Railway Lines in United States.
- EXHIBIT No. 372. Copy of Extract, House of Commons Debates, March 28th, 1938.
- EXHIBIT No. 373. Dominion Expenditures for Construction of Canals.
- EXHIBIT No. 374. Letter dated December 24th, 1937, Financial Times to James H. Conlon, together with Compilation of Trade Figures through Maritime Ports.

THE ACTING CHAIRMAN: It is now one o'clock, and we will resume the hearing at 2.15 p.m.

At 1 p.m. the Commission adjourned, to resume at 2.15 p.m.

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## AFTERNOON SESSION

The Commission resumed at 2:15 P.M.

MR.STEWART: At the adjournment, Mr.Jones, we were discussing the effect of sections 3, 4 and 5 of the B.N.A. Act.

HON. MR.JONES: Yes.

MR.STEWART: Does it, in your opinion, effect the argument that by section 3 the provinces of Canada, Nova Scotia and New Brunswick, were declared to form and be one Dominion, and that by section 5 the language used is that Canada shall be divided into four provinces named Ontario, Quebec, Nova Scotia and New Brunswick?

HON. MR.JONES: No, it does not affect it.

MR.STEWART: That does not affect your interpretation?

HON. MR.JONES: No.

MR.STEWART: If your argument is that the Provinces that formed the Dominion are the same as the provinces that are formed under section 5, how does the position of the province of Canada dove-tail into your submission?

HON. MR.JONES: The provinces of New Brunswick and Nova Scotia would perhaps be on a little different plane but my submission is that the provinces of Canada, upper and lower Canada, were continuing with all the same powers they had before, upper Canada and lower Canada, by the provinces of Ontario and Quebec.

MR. STEWART: How would the present provinces of Quebec and Ontario enforce a right, if any, under the suggested agreement to which Canada, the province of Canada, was a party?

HON. MR.JONES: I would take it that all the powers that were within the competence of the original province of Canada would be, after Confederation, within the provinces of Ontario and Quebec.



MR.STEWART: My suggestion is that the form of the Act, as set out in sections 3, 4 and 5, was deliberately worded that way in order that the provinces resulting and constituted under section 5 would not be the provinces that entered the Union, that the form in which it was done precludes the possibility of interpreting them as the same provinces.

HON. MR.JONES: That is not my construction of the Act. In the Maritime Bank case you will recall that Lord Watson said that the Dominion was created, and the provinces still existed - well, he was speaking more particularly of the province of New Brunswick - that still exists, and also that while the Dominion had certain rights conferred upon it by the Act, the province of New Brunswick retained its powers. Which would rather be contrary to the view you have expressed.

MR.STEWART: I just wanted to place alongside Lord Watson's words as quoted from the Maritime Bank case, the words of Lord Haldane in Attorney-General for Australia Versus Colonial Sugar Refining Company, 1914, Appeal cases, page 252. I think for the purpose of carrying this discussion on I had better read this now into the record.

HON. MR.JONES: Yes, indeed.

MR.STEWART: I am quoting from pages 252 and 253:

"The British North America Act of 1867 commences with the preamble that the then Provinces had expressed their desire to be federally united into one Dominion with a Constitution similar in principle to that of the United Kingdom. In a loose sense the word 'federal' may be used, as it is there used, to describe any arrangement under which self-contained States agree to



delegate their powers to a common Government with a view to entirely new Constitutions even of the States themselves. But the natural and literal interpretation of the word confines its application to cases in which those States, while agreeing on a measure of delegation, yet in the main continue to preserve their original Constitutions. Now, as regards Canada, the second of the resolutions, passed at Quebec in October, 1864, on which the British North America Act was founded, shows that what was in the minds of those who agreed to the resolutions was a general Government charged with matters of common interest, and new and merely local governments for the Provinces. The Provinces were to have fresh and much restricted Constitutions, their Governments being entirely remodelled. This plan was carried out by the Imperial Statute of 1867. By the 91st section a general power was given to the new Parliament of Canada to make laws for the peace, order, and good government of Canada without restriction to specific subjects, and excepting only the subjects specifically and exclusively assigned to the Provincial Legislatures by section 92. There followed an enumeration of subjects which were to be dealt with by the Dominion Parliament, but this enumeration was not to restrict the generality of the power conferred on it. The Act, therefore, departs widely from the true federal model. Of the Canadian Constitution the true view appears, therefore, to be that, although it was founded on the Quebec Resolutions and so must be accepted as





a treaty of union among the then provinces, yet when once enacted by the Imperial Parliament it constituted a fresh departure, and established new Dominion and Provincial Governments with defined powers and duties both derived from the Act of the Imperial Parliament which was their legal source.'

Then, following that, in 1916, Lord Haldane again in the Bonanza Creek Gold Mining Company, versus the King, in 1916, 1 Appeal Cases, at page 579, used the following words:

"In the case of Attorney-General for the Commonwealth of Australia versus Colonial Sugar Refining Company, this Board drew attention to the fact that the expression 'federal' in the preamble of the British North America Act had been used in a somewhat loose fashion, and that the principle actually adopted was not that of federation in the strict sense, but one under which the Constitutions of the Province had been surrendered to the Imperial Parliament for the purpose of being re-fashioned. The result had been to establish wholly new Dominion and provincial Governments with defined powers and duties, both derived from the statute which was their legal source, the residual powers and duties being taken away from the old provinces and given to the Dominion'. It is observed that the British North America Act has made a distribution between the Dominion and the provinces which extends not only to legislative but to executive authority. The executive government and authority over Canada are primarily



vested in the Sovereign. But the statute proceeds to enact, by section 12, that all powers, authorities and functions which by any Imperial statute or by any statute of the provinces of Upper Canada, Lower Canada, Nova Scotia or New Brunswick are at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of these provinces shall, 'as far as the same continue in existence and capable of being exercised after the Union in relation to the government of Canada', be vested in and exercisable by the Governor-General".

I am suggesting that Lord Haldane in these two extracts has given full effect to the wording of Sections 3 and 5 of the British North America Act and expresses the view that there was a further division of Canada a surrender of constitutions and a fresh division by section 5?

HON. MR. JONES: Yes, I know he did that in the extracts you have read but our position is that the more recent decisions of the Privy Council have sustained Lord Watson as set out in the brief. That is the only answer I could make.

MR. STEWART: The Lord Watson case was many years before, Mr. Jones.

HON. MR. JONES: Yes, I know, but the recent cases. I say the recent cases, say in 1934 and '35, '37, sustain Lord Watson's view as to the constitution. And in addition to that I may say that Lord Haldane, I think, was wrong in assuming that the Quebec resolutions were the foundation of the act of British North America.

MR. STEWART: Well, they are much in pari muti with the London resolutions?

HON. MR. JONES: Very much, except that the London



resolutions were the final, -

MR.STEWART: They were the last.

HON. MR.JONES: As we say, the final agreement between the provinces. And when any judge states that the Quebec resolutions may be regarded as the agreement of Confederation then I think he is basing his judgment upon wrong premises.

MR.STEWART: In connection with Lord Watson's dictum quoted on page 97 of the brief, you quote a further extract on page 88 of the brief which indicates the real point for decision in the Maritime bank case. It was argued in that case that the Provincial governments were subordinate and somewhat analogous, in the scheme of the Dominion, to the Governments of the municipalities, in the scheme of the province.

HON. MR.JONES: Yes.

MR.STEWART: And do you not think that his dictum should be construed in the light of the argument that he was repelling?

HON. MR.JONES: I would not, in the first place, regard it as a dictum, because I think it was very material in the consideration of the case that he had under review, and I think that instead of being regarded as a dictum it should be regarded as a judgment of the judicial committee.

MR.STEWART: You see the real point is:

"It is clear therefore, that the Provincial Legislature of New Brunswick does not occupy the subordinate position which was ascribed to it in the argument of the appellant. It derives no authority from the Government of Canada and its status is in no way analogous to that of a Municipal Institution, which is an authority constituted for the purpose of local administration."





That is the real point of the case.

HON. MR. JONES: That is quite right.

MR. STEWART: Now, in connection with the agreement theory, would you give me your view as to this suggestion, that if we are to spell an agreement out of the events leading to Confederation, should not the enactment of the B.N.A. Act be regarded as reducing into statutory form the agreement between the parties, and that on ordinary principles of law the parties could not go behind that agreement?

HON. MR. JONES: I would not so regard it. I place it upon the same principle that some parties may meet together and agree that they have certain functions, that they are under certain duties they have to have performed for the common good, and they agree to have a company incorporated to perform certain services. The incorporation of that company does not defeat the agreement. It does not defeat the agreement. If it were so you would find a great many difficulties in the organization of corporations. The corporation is formed, it has certain powers and certain functions, but any agreement made by the incorporators still exists. That would be my view.

MR. STEWART: But if they have articles of association in connection with their incorporation they are bound by those, rather than by negotiations, arrangements previously made, are they not, as regards the operation of the company?

HON. MR. JONES: The company is bound by those articles, certainly, that limits the company's jurisdiction, but as to the agreement made by the parties who are interested, it seems to me it is not affected by whatever happens in the articles of incorporation.



MR.STEWART: I would like to refer you next to section 146 of the British North America Act and ask whether, in your view, the provisions of this section are not inconsistent with the view that the three provinces, or the four provinces, constituted the Dominion and delimited its powers? Section 146 reads thus:

"It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-Western Territory or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses, expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act."

HON. MR.JONES: Yes.

MR.STEWART: Now, that is an admission to the partnership, if I may term it so, without reference to the partners.

HON.MR.JONES: I do not quite follow that. An admission to the partnership between whom?

MR.STEWART: That Newfoundland, Prince Edward Island and British Columbia, Rupert's Land and the North-West Territories, or either of them, provision is made for their entry into the union on such terms and conditions in each case as are in the Addresses expressed and as the Queen thinks fit to approve. That is the



addresses of the Parliament of Canada and these legislatures without reference to the provinces.

HON. MR. JONES: I gather from that that the provinces or the colonies must have joined in the addresses, in the reading of that, as I understood it.

MR. STEWART: Oh yes.

HON. MR. JONES: Yes.

MR. STEWART: The colonies of Newfoundland, Prince Edward Island and British Columbia.

HON. MR. JONES: Oh, I see, yes. Well, my explanation of that is simply that the Imperial Parliament, of course, was all powerful. I will say that, and if that section were eliminated or had never been enacted, the power would be there just the same. And I am instructed that there was such a provision in the London resolutions. In fact, that is one of the provisions of the resolutions that was carried into the Act.

MR. STEWART: Yes, I am not suggesting it was not in the London resolutions, but I am suggesting it removes it from the power of the Imperial Parliament and vests it in the executive government at London, plus the resolutions or addresses of the House of Commons of Canada, without reference to the wishes of the existing provinces.

HON. MR. JONES: It might be, and the procedure has been, that the Dominion has acted with reference to provinces separately in many cases, and the power would be irrespective, as I say, of that section. The Imperial Parliament has always been the final authority and the London resolutions show quite plainly that there was such an agreement to that effect.

MR. STEWART: Would it not be more consistent with the Pact view if the Imperial Parliament had, by the British North America Act, said the provinces constituting







the Dominion shall have a right to approve or disapprove of the terms upon which any additional provinces enter the Dominion?

HON. MR. JONES: I am not sure that it would. From that standpoint I am not sure it would make any difference.

MR. STEWART: Now, I just wanted to call your attention to one or two more points of divergence between the London resolutions and the British North America Act, some of which may have had far-reaching effect. The London resolutions provided that the general Parliament should have power to make laws for the peace, welfare and good government of the Confederation, - "Peace, welfare and good government". The British North America Act substitutes the words "Peace, order and good government".

HON. MR. JONES: Yes.

MR. STEWART: Which may have very far reaching differences on the interpretation of the Act, Section 91.

HON. MR. JONES: Possibly, although at the moment I cannot see where there would be any difference.

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MR. STEWART: The question of the non abstente clause in section 91 is not to be found in the division of powers in the London resolutions--I think that question might have very far reaching results, might it not?

HON. MR. JONES: I suppose it might have.

MR. STEWART: In the British North America Act the non abstente clause does not apply to general peace, order, and good government.

HON. MR. JONES: No, it does not.

MR. STEWART: With that peace, welfare and good government clause in the London conference, it might have been more widely construed, might it not?

HON. MR. JONES: It might possibly have.

MR. STEWART: There was one other principle to which I wished to refer and that is the assumption that it was a compact, that Confederation is the result of an agreement which is still subsistent and the British North America Act passed in pursuance thereof, did not fully carry into effect the intention and purpose; do you think it is admissable at this date to argue that it should be amended in order to give effect to the intention of the parties?

HON. MR. JONES: It might be permissable if there was any misrepresentation or any misunderstanding, but that is quite apart from our submission. Our submission is that the agreement stands between the provinces irrespective of the Act of British North America.

MR. STEWART: Well, pro contra, if the British North America Act in purporting to carry into effect the agreement has been in existence for all these years and not been challenged as to whether it conforms with the agreement or not, should that not be construed as



acceptance by the parties to the agreement that it is what they intended?

HON. MR. JONES: Not necessarily, but it might be an element. What we say, in relation to our particular claim, in reference to the development of this point, is that the Act has not been accepted by all parties recognizing the agreement, except by partial performance and by declaration.

MR. STEWART: There are just one or two other points. I wish to refer you, in connection with your submission on the point that there should be conditional grants to the language of the Duncan Commission and of the White Commission with reference to that type of grant. The Duncan commission used these words:

" It is an inevitable consequence of this form of percentage subvention that the provinces are encouraged to undertake special expenditure which they may not be able to support, unless and until the scheme on which the expenditure is made increases their prosperity."

Then the White Commission goes on from that:

"We agree with this opinion expressed by the Duncan Commission, not only with respect to subventions by the Dominion for the purposes of aiding the provinces in highway construction, but in other schemes for which Dominion subvention is available; and once such subvention becomes available the pressure upon provincial governments, under our political system, is almost irresistible."

HON. MR. JONES: Yes, I remember those quotations. However, they did not make their findings on the principle of fiscal need. We admit that and set it out in our brief. Nevertheless, we say that they are wrong because





in the whole history of Confederation, need has been the ruling principle in the history of the grants to the provinces.

MR. STEWART: There is just one other point which arises out of the terms of your submission, that no allowance or consideration was given by the White Commission to the claim of the Maritimes based on tariff, and for that purpose I would refer you to the tenth paragraph of the White Report at pages 19 and 20. After discussing the special claims they go to what they call "The general claim of the Maritime provinces." In dealing with it, the Duncan commission uses this language-- this is contained in the White report at page 20--

"The outstanding fact, it seems to us, is that the Maritime provinces have not prospered and developed either in population or in commercial, industrial and rural enterprise as fully as other portions of Canada. We are unable to take the view that Confederation is of itself responsible for this fact. The trend and nature of economic development generally throughout the last sixty years had made within the Maritimes changes in the structure of business and employment which are unrelated to Confederation and which would have taken place whether or not the Maritime provinces had been independent units outside of Confederation. Even within Confederation there has been such a measure of responsibility resting on each province for its own development that much at least of what has happened within the Maritime provinces must be related to their responsibility and not to the responsibility of the Dominion-- but we are far from saying that the Dominion,



"within its sphere of control, has done all for the Maritime provinces which it should have done." Then the White Commission goes on to say:

" We are in accord with the claim of the Maritime provinces and with the finding of the Duncan Commission that these provinces have not shared proportionately with the other provinces of Canada in the economic advantages accruing to the Dominion as a whole from Confederation and in our recommendations have taken it into account as one of the most impressive elements in their case for more favourable financial arrangements."

I am suggesting that the effect of the tariff is what was uppermost in their minds in making that point.

HON. MR. JONES: It is very difficult to say what has uppermost in their minds because the White Commission endeavoured to straddle, if I might use that term, some of the important matters, without any particulars or any details. It is not a report, which I think, can be seriously considered by any government. If it was thought by the White Commission or Duncan Commission to compensate the province of New Brunswick for tariff loss, we will say that the damages as a result of the tariff policy have been, in view of the statement of Professor Rogers who was a well-recognized authority and who conducted a very careful investigation into the economic conditions of Nova Scotia--according to professor Rogers, it was a matter of \$4,400,000 or a little less than \$5,000,000 each year, in 1931. We argue from that, that in New Brunswick the conditions are the same, practically, except that Nova Scotia has more benefits from the tariff than New Brunswick. From this,



I think the commission must necessarily consider that New Brunswick's loss each year would be \$2,000,000 or \$3,000,000. Surely it should not be considered that the Duncan and White commissions made any adequate findings in respect of that matter. If they did, then the position taken by the Maritime provinces would be that they are entitled to compensation. If they found that they are entitled to compensation, then, what I say is, that the amount granted would be so palpably inadequate, it should not be regarded by anybody.

MR. STEWART: If we were to assume that the effect of the tariff was to reach, even the proportion of \$4,000,000 per annum, and there was a payment of that to the people of the province of New Brunswick, how much of that would find its way into the treasury of the province?

HON. MR. JONES: The way I would consider that is, first; why did the White and Duncan commissions pretend, if they did pretend--if they say it was for that purpose, how did they expect that it would find its way into the provincial treasury?

MR. STEWART: They were merely trying to compensate the province for the loss, not the people; they were considering the fiscal relationship between the Dominion and the province.

HON. MR. JONES: If that is a fact, then I say they have not made any finding in reference to the real compensation which should go to the people. How is it to reach the people, except to hand it over to the province as trustee?

MR. STEWART: Trustee for whom?

HON. MR. JONES: Trustee for those who are entitled to







it.

MR. STEWART: A good many of those have died, have they not?

HON. MR. JONES: A good many have left heirs.

MR. STEWART: Those heirs might be in the New England states, now.

HON. MR. JONES: If the Duncan and White Commissions intended it as compensation for the loss to New Brunswick by the tariff, they certainly have not covered the whole ground, as we now set it out because we say that this is a loss to the business interests in the province of New Brunswick and we have a right, as a province, to claim compensation and hold the money as trustee for the people who are entitled to it.

MR. STEWART: That would be a claim on behalf of the people of New Brunswick and could not be pressed upon this commission which is one on the relations between the governments of the Dominion and the provinces.

HON. MR. JONES: I doubt whether that statement is quite accurate. I think the province has a right to submit to this commission any claim for damages which its people have suffered through the operation of Dominion policy.

MR. STEWART: Those same people are also citizens of Canada, are they not?

HON. MR. JONES: Citizens of those units which we call Canada or which we call the Dominion. In a sense, probably, but under the direct jurisdiction of the province. What I say is, it may be wrong, but my position would be simply this; in the first place, any finding of the Duncan or White Commissions is not final. I think I have cited authority for that. In the second



place, even if they did find--even if Duncan did find, in 1928 or White in 1934, and even if it were final, then what about the loss which we have sustained after that? How about this commission? Further, our position is that this province has a right to assert claims for damages sustained by its citizens to these commissions. This is our position, anyway. Our business interests in the province suffered, and the province has a right to look after it. It would be interesting to know how the Duncan and White Commissions arrived at the loss to the province as a province, and as a province without regard to the rights of the business people.

MR. STEWART: I do not think the Duncan commission attempted to estimate, but the White commission did attempt to estimate.

HON. MR. JONES: The White commission attempted to estimate without giving us any figures. The White Commission tried to gather up all the loose ends and tried to make it as final as it could. Thank you, very much, Mr. Stewart, I have appreciated having these matters brought up.

COMMISSIONER ANGUS: I would just like to ask one question, sir. The conditional grants or subsidies which have been asked for--I am asking this question for the taxpayers in the land as I am afraid that they are sometimes lost sight of. It seems to me that in many public services, very worthy services, such as public health and education, all of the advocates of these services have sought to have their services covered by subsidied from the Dominion to the province, and the sort of subsidies you mentioned which would be passed on direct to the people. Now, if that course--would not one aspect of the system be that the taxpayer was placed in a very weak position in control of the expenditure of his money



because, although those subsidies would be approved by two governments, by that of the Dominion and by that of the province, the Dominion would consider the expenditures primarily as compensation for the province or as money required to equalize conditions between the provinces. The provinces would consider the money in a sense, as found money, that one would not be very likely to question the expenditure of, so long as it was passed on in some way to the public. My point is that if you are going to meet the cost of public health or education in this way, it would be subject to very little direct control by the representatives of the people likely to ask either or both of the two vital questions; first, is this the best use that can be made of the money, is this the most urgent requirement of the country? Secondly, does this expenditure do good, much more than balance the harm caused by the worst tax that we have to-day of similar amount? Now, those are questions which I suppose under a sound financial system are being constantly asked and my question now is, would this system of conditional subsidies have the same tendency to obscure those accounts and make it perhaps rather easier for certain services or advocates who look upon them as primarily worthy services, to get a sort of practical hold on the taxpayer.

HON. MR. JONES: I think I can understand your suggestion. What we advocate is a conditional subsidy, not so much to the provinces, but to the needs of those particular governments or local municipalities, school districts or boards of health. We understand, of course, that the old age pensions--we are back to the old age pensions again. There is a weakness in the form of the







remedy. The taxpayers usually do complain, after all, and is it not a matter of proper administration. I quite understand your suggestion that there might be great loss if the money came too easily, but it does seem to me that, if we take the local school districts as an example or any other local municipal body. If that body is required, we will say, to pay a certain proportion of this amount and the remainder of it is a conditional subsidy, just for that purpose, that local body or province would become interested for the reason that it had to contribute from its own funds. The Dominion would only pay a certain proportion of it. I think that the local administration would be very carefull to see that the amount was properly handled. In my experience, there is no administrative body any more economical than the trustees of a school district. They know everybody and the know every cent which is expended.

(Page 9005 follows)



Now, take the case of education; suppose this grant could be so worked out that it would pass to a school district, and the school district would be required to put up say 25% and the Dominion 75%, or the Dominion and the province together 75%, and let administration be in the district subject to supervision by the Dominion. It seems to me we would have one of the most careful systems of expenditure that you could possibly devise.

COMMISSIONER ANGUS: I am not considering so much care in expenditure as the possibility of a province receiving perhaps Old Age Pensions, when its primary need is for something to be done for tuberculosis or, - and this is perhaps the best example, - extra educational facilities, when its primary need is a reduction in taxation. Now, with an unconditional subsidy the province could, if it chose, reduce taxation or spend the money in education. But with the conditional subsidy the money would be paid for whatever purpose was designated and could not be used for what the people might conceivably want more, - the reduction in taxation.

HON. MR. JONES: Quite so. Well, I would provide against that by the organization of a Dominion-Provincial Board, such as we advocate, to act as a grants-in-aid Commission, and a subvention that is made in one year to any district or any province for certain purposes may be discontinued immediately on their report. They would have details, they would have the constant study of conditions. If it is found that the Province of New Brunswick in respect to education has not the need that it has in respect to health matters or other social services, it can be changed.

COMMISSIONER ANGUS: Well, the strong point of the grants has been stated by yourself to be that they can be



discontinued or modified, and yet when we have heard the civil servants who have been in charge of the administration of these grants, they complained very bitterly that grants have been withdrawn and have been terminated unexpectedly. They have said that grants should be permanent once they are given; that it is a weakness in the system that it is subject to periodical revision.

HON. MR. JONES: They refer more particularly to these ten year terms, and the result was that the administrators of the various services relied too much upon the idea that they would always be continued. Further than that, that they embarked upon expenditures which, if they had had any idea that these grants would be discontinued, would never have been undertaken. I think that is the idea expressed by the municipalities. But once they realize that this Commission is set up and that from year to year an adjustment might be made I think perhaps that difficulty might be overcome. But I quite appreciate what you say.

COMMISSIONER DAFOE: I have some questions that I would like to get your judgment and comment upon. Largely dealing with the historical setting of Confederation, - because there is that aspect of the question as well as the legal and Constitutional aspects, on which points, of course, I do not presume to comment. On page 74 you say: "Before Confederation the situation in Upper and Lower Canada was critical". What is the scope of that observation?

HON. MR. JONES: Well, it is based upon statements of Sir John A. MacDonald and others, that are cited in the brief and, of course, a good many instances could be found. It means that there was great difficulty in carrying on the Government of Canada on account of jealousies between Upper and Lower Canada.





COMMISSIONER DAFOE: It was political and racial?

HON. MR. JONES: Yes, and according to the statements that were made it was critical.

COMMISSIONER DAFOE: I do not think there is any question about that.

HON. MR. JONES: And then there were financial difficulties.

COMMISSIONER DAFOE: You think there were economic and financial troubles?

HON. MR. JONES: Yes.

COMMISSIONER DAFOE: At all corresponding in their severity to the political situation?

HON. MR. JONES: Well, I am not sure just what comparison to make in that respect.

COMMISSIONER DAFOE: I think it is important to give some consideration to this because of certain developments. Now, I think there is something to be said on the other side, that the situation of Canada in an economic sense was not peculiar to the Maritime Provinces - it was not critical, it was not inferior to the Maritimes, and I would like to put on the record the opinion of a Maritime historian on that point who, I presume, has given some consideration to it. This is Mr. Whitelaw's book, The Maritimes and Canada Before Confederation. This is what he writes:

"Although the maritime provinces were accustomed to compare their external security and internal harmony with that of Canada, to the great disadvantage of the latter, they looked wistfully and with no slight jealousy at Canada's spectacular economic development. With some disregard of the complexity of the factors involved, they commonly regarded the Canadian development as the result of the union



"of 1841. While attacking with his most vitriolic pen the chronic political turmoil in Canada, Joseph Howe was accustomed to laud the economic advantage of the Canadian union as the foundation of the material prosperity of that province." Then further:

"For many decades there had been prominent maritime politicians advocating closer union with Canada. The recent phenomenal growth of Canada had added weight to the arguments for such an attachment."

So that obviously there are two sides to that question.

HON. MR. JONES: Yes, Is he a Maritimer?

COMMISSIONER DAFOE: Professor Whitelaw is a Maritimer, I think,

HON. MR. JONES: I do not recall whether he is or not. It does not sound like a Maritimer.

COMMISSIONER DAFOE: Well, I always understood he is. We will have to make enquiries about that because apparently, if he is a Maritimer, he has been guilty of something, - I do not know just what.

Then I would like to have your views, although I think they have been well expressed, on the question of the Quebec Resolutions. I take it from the statements which you have made that there is no contention that the Quebec Resolutions were the basis of Confederation?

HON. MR. JONES: Well, there is no contention on our part that they form the contract that we rely upon.

COMMISSIONER DAFOE: You say those Resolutions were submitted to the provinces interested, but were not approved by Nova Scotia or New Brunswick. There were two elections in New Brunswick, and this province is the only province in which the Quebec Resolutions came before the electors. Could you tell me whether either of those elections was



fought out on the basis of the Quebec Resolutions as a means of union with Canada? I speak to you as an authority on the History of New Brunswick.

HON. MR. JONES: It is a little before my time, and I do not know just what the issues were exactly. I am not sure that that was the only issue. If we take it as an ordinary election there probably were two dozen issues. There are always a lot of issues, and it is hard to say what crept in.

COMMISSIONER DAFOE: I have seen it stated, and I should think perhaps it is accurate, the first election was fought on the Quebec Resolutions substantially. Of course, you cannot have a single issue.

HON. MR. JONES: In connection with that, of course, there would weave in all kinds of troubles or issues about the British connection and all that sort of thing, so that you cannot tell whether it was purely on the Quebec Resolutions or not.

COMMISSIONER DAFOE: And the second contest, the Confederates made it rather obvious that they were not fighting for the Quebec Resolutions but that there was to be some amended, modified proposition to be reached by further conference.

HON. MR. JONES: Quite so, on the second one.

COMMISSIONER DAFOE: Well now, that pretty well disposes of the contention, the statements made in the Canadian Parliament in 1865, which are so often quoted, - in fact, there are some quotations in the brief, - the statements made in the Canadian Parliament that the Quebec Resolutions comprised a treaty between all the provinces, and could not be amended. In the light of the subsequent action of New Brunswick and Nova Scotia, however, valid that argument may







have seemed at the time, it was rendered invalid by the failure of the other provinces to agree.

HON. MR. JONES: I think Sir John A. MacDonald said it must be regarded in the nature of a treaty, that is, something that had been agreed to. But I quite agree that afterwards the idea was that they should make a new agreement.

COMMISSIONER DAFOE: I would say that the statements in this brief on that point, which I think are in strict accord with historical facts, entirely remove the contention that the Quebec Resolutions were a treaty, and render invalid all those references to which our attention is so frequently drawn, and I think if that has been accomplished something has been attained. Now, the proposition of the New Brunswick Government is that it was the London Resolution that was the basis of Confederation?

HON. MR. JONES: Yes.

COMMISSIONER DAFOE: And that in so far as they were not incorporated in the British North America Act they retained, shall we say, a moral authority?

HON. MR. JONES: Well, I would not put it forward before this Commission as a strict legal claim, - not at the moment - but it was in the nature of an agreement that the provinces and the Dominion should carry out, from the standpoint of what is fair and right and just.

COMMISSIONER DAFOE: I do not think there would be any dispute about that, that it is not legally valid, but it does indicate a general attitude, and that within the range of possibility it ought to be carried out.

HON. MR. JONES: I am not to be understood to say that I admit there is no legal claim but at the same time we are not putting it forward to this Commission as a legal claim



because if we did the Commission might tell us to go to the Courts and have it decided. But I do not want to admit it, and I am not instructed to admit that there is no legal claim. However, I think you have expressed it very well, that that is our submission, that it shows the design and the understanding which all the parties had, that this agreement should be carried out by the Dominion when it was incorporated, and that the Dominion has recognized it by the Intercolonial Railway Act and by the Maritime Freight Rate Act, and all those conditions which are fully set out in the brief; they have recognized from time to time, even what you said this morning about the Grand Trunk Pacific Railway, there seemed to be an attempt to carry out something in regard to the Maritime Ports by the construction of this road. Of course, in that connection I am not quite sure that from the wheatfields to the seaboard at St. John and Halifax there are any uphill grades, - they are all downhill.

COMMISSIONER DAFOE: I am thinking now of my own country, and I believe we represented to the electors of the West that it was practically downhill all the way from Winnipeg to Tidewater.

HON. MR. JONES: I mentioned that because the remark was made this morning that water would not run uphill, but there is no uphill, the grades are wonderful, and the road was constructed with the idea that freight might be carried to the Ports of the Maritime provinces. And, of course, there is just this observation to make, that even if it cost a little more it should not be saddled upon the railways but from our standpoint the Dominion Government was charged with the duty of developing this trade, and if it costs something to do it it is for them to do it, no matter



what water transportation there is, or what railway transportation.

COMMISSIONER DAFOE: Unless there was that justification behind the transcontinental movement from Moncton to Winnipeg - I am afraid there was no justification, and that was the justification which was advanced and pleaded at that time.

HON. MR. JONES: Of course, we claim that according to the design, that was intended and that our people relied upon <sup>it</sup>, because after all the construction of this railway, unless they had the picture of development of the Maritime Ports, would not have induced us to go into Confederation.

THE ACTING CHAIRMAN: It is now 3.15, and we will adjourn until Monday morning at 10 A.M.

HON. MR. JONES: Thank you. I did have this to say about this particular matter in part 2, - just a few observations. I do not want to make them now, but if you would give me a little time on Monday morning to present them, and one or two other things that have to be cleared up.

THE ACTING CHAIRMAN: We will have the questionnaire, and hear from the Department Heads?

HON. MR. JONES: I am not sure about the Government answering those questions on Monday. Could they be sent in? The Premier has not been well.

THE ACTING CHAIRMAN: Would he be able to make a declaration to the Commission as far as the amalgamation of the provinces is concerned?

HON. MR. JONES: Probably the Attorney General can do that. That question will be answered, I understand, on Monday morning, but the other matters will be deferred.

3.15 p.m. the Commission adjourned, to resume on Monday morning, May 23rd, 1938, at 10 a.m.







ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

REPORT OF HEARINGS

REPORTERS:

George Thompson  
John Robertson  
David Torry





FREDERICTON, NEW BRUNSWICK, MAY 23, 1938

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## ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

FREDERICTON, NEW BRUNSWICK, MAY 23, 1938

The Royal Commission appointed to re-examine the economic and financial basis of Confederation and the distribution of legislative powers in the light of the economic and social developments of the last seventy years, met at the Parliament Buildings, Fredericton, New Brunswick, on Monday, May 23, 1938, at 10 a.m.

PRESENT:

COMMISSIONER JOSEPH SIROIS....THE ACTING CHAIRMAN

JOHN W. DAFOE, Esq.	)	
DR. ROBERT ALEXANDER MACKAY	)	
PROFESSOR HENRY FORBES ANGUS	)	Commissioners

Commission Counsel:

James McGregor Stewart, K. C.

Secretariat:

Adjutor Savard, Esq.	Acting Secretary
R. M. Fowler, Esq.	Legal Secretary to The Chairman
Wilfrid Eggleston, Esq.	Assistant to the Secretary

FOR THE GOVERNMENT OF NEW BRUNSWICK:

Hon. J. B. McNairn, K. C.	Attorney-General
Hon. A. P. Paterson	President of the Executive Council Minister of Education, and of Federal and Municipal Relations
Hon. A. C. Taylor	Minister of Agriculture
Hon. W. P. Jones, K. C.	Counsel
J. H. Conlon, Esq.	Director of Federal and Municipal affairs

FOR THE UNION OF NEW BRUNSWICK MUNICIPALITIES:

T. H. Whalen, Esq.	The Chairman of Committee
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## FOR THE MUNICIPALITIES OF NORTHUMBERLAND

AND GLOUCESTER:

D. King Hazen, Esq., K. C.	Representative
W. W. V. Foster, Esq.	Representative

FOR THE NEW BRUNSWICK TEACHERS' ASSOCIATION:

Mr. O. V. B. Miller	Representative.
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Parliament Buildings,  
Fredericton, New Brunswick,  
May 23, 1938.

MORNING SESSION

The Commission met at 10.30 A.M.

THE ACTING CHAIRMAN: I think you have some questions to put to Mr. Jones, Mr. Dafoe, have you not?

COMMISSIONER DAFOE: Mr. Jones, there are some points I wish to discuss with you. This will be more in the way of a discussion than question and answer; would you like to sit down?

HON. MR. JONES: No, not at the moment, thank you.

COMMISSIONER DAFOE: You are not on trial, you know, you are not under cross-examination.

HON. MR. JONES: I quite understand that and I appreciate the help which the Commission has given to us in clearing these matters up --

COMMISSIONER DAFOE: I judge that Part II is given great importance by the New Brunswick government, and I think you will agree that there are a great many things about it about which there might be differences of opinion.

HON. MR. JONES: Quite so, differences of opinion have been expressed very often.

COMMISSIONER DAFOE: Now, when we adjourned on Saturday, we were talking about resolution 66 in the London Resolutions. I had expressed my view that it represented an attitude of mind on an understanding, but that it was not an agreement which was legally binding. I was unable to take you along with me in agreement on that point.

I think the whole case or much of the case rests upon the theory that there was a formal contract and that No. 66, though it is not to be found in the B.N.A. Act, was the basis of the contract, and that someone desired to get the



scope or intention of the contract as outlined in Resolution 66, one had to read it in the light of statements made in speech by Upper Canadian representatives when they visited the Maritimes in the interval between the Charlottetown Conference and the Quebec Conference, supplemented by certain statements which were made during the Confederation Debates<sup>3</sup>/<sub>4</sub>

HON. MR. JONES: Our attitude was that those, read in connection with resolution 66, would tend to explain what the contract or agreement between the parties was.

COMMISSIONER DAFOE: Yes, the whole thing together.

HON. MR. JONES: But I would not like to subscribe to the theory that Resolution 66 requires any pronouncements in order to make its meaning plain.

COMMISSIONER DAFOE: You think if the speeches had not been made that the terms of resolution 66 are, in themselves, explicit?

HON. MR. JONES: Yes, coupled with the terms of the Act, the terms of Resolution 65, all coupled together, I think they are sufficiently explicit to convey the meaning which was intended, but taken with those pronouncements, I think it is abundantly plain.

COMMISSIONER DAFOE: . . . The situation when the London Conference was called was, I think, roughly this: that the Quebec Resolutions had been confirmed by the Parliament of Canada on the ground that they were a treaty and . . . could not be changed even to the extent of a single word. However, this was not the view of either New Brunswick or Nova Scotia. Those Resolutions had not received any formal approval in either province, although there were two elections in New Brunswick. It was represented to the electorate by the Confederates that the agreement would have to be very considerably modified, so



they sent delegates to London. The Government of Canada realized that the Quebec Resolutions would have to be changed and they delayed sending their delegates to the last possible moment, leaving the Nova Scotia and New Brunswick delegates in London to amuse themselves as best they could for a period of some weeks.

HON. MR. JONES: Yes, even some months, I believe.

COMMISSIONER DAFOE: It is perfectly evident looking back at the letters, that they wanted the changes that had to be made, enacted, per saltum, to use the terms which Sir John used in his letter to Tilley, in order that there would be no repercussions in Upper Canada.

HON. MR. JONES: Yes, that is correct.

COMMISSIONER DAFOE: Now, as to the powers of that conference, the Maritime delegates were obviously going to meet the Canadian delegates to make the arrangement, but do you not think it peculiar that the instructions to both the Nova Scotia and New Brunswick delegates were that they were to arrange with the Imperial Government -- it is quoted here somewhere. This was the authorization given them; it was not the authorization to meet with the delegates of Canada to make a union, but to arrange with the Imperial Government. Now, what would be your explanation of those instructions?

HON. MR. JONES: Well, it certainly could not mean that those delegates were supposed to go over there and ignore the other provinces. It certainly could not mean that in view of the whole situation, even though a strict wording of it would exclude Canada, one would hardly suppose that the government would expect its men to go over and arrange with the British Government any union with provinces not represented there.

COMMISSIONER DAFOE: Would you not think that was a revelation of the fact that they know that the Canadian





delegates themselves could not make an agreement, The word "agreement" has various meanings, but it must have been thought that they could not make an agreement which would bring into existence in this part of North America a Confederation or Legislative Union or anything of that kind.

HON. MR. JONES: They could not do it without the Imperial Parliament, that is so far as the creation of the Dominion is concerned. They could not create a central body with any authority of any kind without the sanction and approval of the Imperial Parliament.

COMMISSIONER DAFOE: No, they could not create a body with any authority without the sanction of the Imperial Parliament.

HON. MR. JONES: Of course, it required an Imperial Act to incorporate the Dominion.

COMMISSIONER DAFOE: As a matter of fact, a record of the preceding ten years shows that the British provinces had very limited rights. They could not even meet together to discuss intercolonial matters and matters of Confederation without prior authorization of the Colonial Secretary. This was made quite clear in 1858 when the Colonial Secretary, Bulwer Lytton, took strong objection to the action of Sir Edmund Head, in consenting to having these words put in the Speech from the Throne in proroguing the parliament of Canada, "I am desirous of inviting them ---" that is the governments of the sister provinces -- "to discuss with us the principle on which a bond of federal character uniting the provinces may perhaps hereafter be practicable." Lytton's note on that -- there are copies of it in the Archives -- was that Head had perpetrated a grave misdemeanour and he had been urged to recall him because he had presumed to infer that they could have a meeting without first consulting the Colonial Secretary. Now, Head, in reply to this attitude wrote that he knew that the proposal



must originate, not with the Government of Canada, but with that of the Queen. This seems to me to be a very interesting statement. The Government of Canada was not even the Government of the Queen. The Government of the Queen was the Government of Great Britain and the Governments of Canada were, obviously, the Governments of the Colonial Secretary.

In 1860 the Duke of Newcastle, the Colonial Secretary circularized the Governors of the provinces that the governments of these provinces were not to meet in conference on these matters, unless they obtained prior permission from the Colonial Secretary. Then, in 1862 there was a letter sent to the colonies by the Colonial Secretary telling them that if they met together, the Imperial Government would sanction the result of the meeting. In reference to that, MacDonnell, the Lieutenant-Governor of Nova Scotia, did not know about that authorization and he would not agree to the Charlottetown conference in 1864, until he had written England to secure the authorization of the Imperial Government.

Now, all this goes to support my own view that the powers of the provinces were very limited, that they were dependent and had nothing in the nature of sovereign rights and that therefore the resolutions of London had no validity apart from the action of the Imperial Government. There is an interesting phrase in the Carnarvon Speech which is quoted here:

" To those resolutions all the British provinces in North America were, as I have said, consenting parties and a measure founded upon them must be accepted as a Treaty Union."

Well now, the resolution not included in that measure is



not, I would say, a part of the Treaty. It retains whatever value it has, whatever validity it has, in its moral content as to what it imposed upon the Dominion when ... a general understanding as to what should be done was being reached.

HON. MR. JONES: You make your position very plain; yes, I follow it.

COMMISSIONER DAFOE: It seems to me that is not an unreasonable position to take.

HON. MR. JONES: Of course, in that connection, in addition to what we might say about the authority of the delegates and the authority of the provinces which existed to make these arrangements -- we say that it is clear that the provinces did agree and that that is sufficient to confer upon them the power to have agreed. The fact that they agreed is very positive in the B.N.A. Act, "The provinces do agree and they do express desire and consequently --" If they agreed upon something without the authority of the British Parliament for them to have made this obligation of agreement, we say that goes back and gives jurisdiction to those provinces afterwards, in respect to whatever they did agree at the London Conference. We can link up the London Conference so plainly with the agreement and link it up so plainly with the Dominion that it shows that the Dominion assumed the responsibility in connection with, even this Resolution 66.

COMMISSIONER DAFOE: Yes, but it did not need that to authorize the Dominion to do anything which was within its sovereign powers in the way of developing the ports of the Maritimes.

HON. MR. JONES: Yes, but the Dominion accepted the agreement. The point I wish to make here is that the Dominion was a free agent when it was incorporated, that







is in respect to this particular matter. The Act of British North America simply provided that the Dominion would construct the Intercolonial Railway within a certain time. There was no mention in that Act as to how they were going to construct it, but in the meantime the provinces had arranged with the Imperial Government for a guarantee. The Dominion could not have accepted the guarantee, but it did accept the guarantee arranged by the provinces, and the acceptance of that must be taken to mean that the Dominion accepted the terms of the contract in which the pledge or guarantee was mentioned.

For instance, you will recall that in Resolution 65 there was a pledge that the sum of three million pounds sterling, pledged by the Imperial Government should be applied. This is not in the Act at all. The point is that the Dominion might have gone on and built the railway without accepting the money which was really arranged for by the provinces. So that what I say is that the provinces met there, and it is just the same as if the provinces had supplied the \$15,000,000 or the three million pounds sterling; the Dominion was willing to accept this three million pounds sterling for the building of the railway. The Dominion did not have to take it if it could finance it by itself. Therefore, the Act of British North America did not contain the whole scheme of Confederation. The whole scheme of Confederation involved this pledge or guarantee. The provinces were desirous of having the Dominion build the railway as otherwise the whole scheme would be aborted.

COMMISSIONER DAFOE: Do you not think that the guarantee was completely fulfilled when the Intercolonial Railway was builded in keeping with **Article 145** of the **B.N.A. Act**?

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HON. MR. JONES: I referred to it more particularly to show that the Dominion came into disagreement and that it recognized the agreement because the provinces had arranged to supply it with three million pounds sterling. If the Dominion failed in the agreement, it must necessarily fail in the terms of the contract. It could not accept the benefit of it without being responsible for the disadvantage.

COMMISSIONER DAFOE: I think there is ~~ground~~ for a difference of opinion on that. Article 145 provided for the building of the Intercolonial; the building of it in six months and the conclusion of it with the least possible delay. The fact that Resolution 66 was not included in the enactment permits the assumption that it was merely a declaration of attitude or understanding, the scope of which and the intent of which was a matter to be decided as the years went by by the Dominion Government. The matter in dispute is whether in what the Dominion Government did in subsequent years, it fulfilled the spirit of Resolution 66; this becomes a subject for discussion.

HON. MR. JONES: But that was a preemptory statement as to what the Dominion should do with Resolution 66. It was to be prosecuted at the earliest possible moment when the finances were available and was to be prosecuted by the Dominion, so that it is an imperative provision by the Crown. I quite understand that these observations of yours are direct remarks, in the first place, towards the legal end of the matter which we are not presenting before this Commission, as I stated at the start. In regard to the intent or attitude of mind -- I have just forgotten the expression which you used -- that for these purposes seems to me is sufficient is the design of those who entered Confederation in respect to the development of this trade to the seaboard. It is not, of course, as I

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and as you said before to be taken from those pronouncements made by public men. Now, that design has been recognized by the Dominion Parliament, that is what we say in the brief. It is in the preamble to the Maritime Freight Rates Act, that is there is a pronouncement there by parliament that once the design or the intention can be determined, the intention of those who entered into Confederation, then it is the duty of the country to carry it out. Of course, it would not matter whether it is legal or not, so far as the Crown is concerned it is the duty of Canada to carry it out.

What we are alleging is apart altogether from that question. Many of these provisions, as it can be shown, have been attempted by legislative enactment of the Parliament of Canada which shows that there was a design for Confederation which was not incorporated in the Act of British North America because that very Act refers to the pronouncement which was made before and at the time of Confederation and which, taken with the documentary evidence, shows what that design was. Dealing particularly with the operation of the Intercolonial Railway, there was a design as to that and that certainly is not in the British North America Act. The Parliament of Canada has taken it that there was a design which was not in the Constitution as to the operation of the Intercolonial Railway. We say there was a design also, exactly on all fours with that as to the development of trade between the Great West and the seaboard. This resolution simply provides for the construction of the railway and that the pledge being used -- Resolution 66 goes right along and say, "The improvement required for the development of the trade between the Great West and the seaboard are regarded by this conference as of the highest importance to confederation and shall be prosecuted --"





as I say, so that what I say is, regardless of the authority of the delegates and regardless of the power of the province to enter into this agreement so far as this Commission is concerned, we only say that we are advancing the design or intention and that there is legislative admission by the Parliament of Canada and that this Commission should have regard to such intention and report accordingly .

COMMISSIONER D. F. O'NEILL: I do not know that we are so far apart, except on the point of it being a legal contract. There is room for discussion as to whether the Dominion failed so completely, as Part II suggests.

HON. MR. JONES: Of course, that is quite another approach to the matter, that is another question.

COMMISSIONER MacKAY: Is it certain, Mr. Jones, that the London Conference thought of the trade with the seaboard as being trade through the Maritime ports?

HON. MR. JONES: I would think there is no other construction to put on it.

COMMISSIONER MacKAY: On page 99 of your brief, there is a quotation from a speech by the Hon. George Brown. First he speaks of immigration and then he says:

The resolutions before us recognize the immediate necessity of those great territories being brought within the Confederation and opened up for settlement. But I am told that, while the Intercolonial Railroad has been made an absolute condition of the compact, the opening up of the Great West and the enlargement of our canals have been left in doubt. Now, Sir, nothing can be more unjust than this. Let me read the resolutions:--

'The General Government shall secure, without delay, the completion of the Intercolonial Railway from



"'River du Loup through New Brunswick to Truro in Nova Scotia.' The communications with the North West Territory, and the improvements required for the development of the trade of the Great West with the Seaboard, are regarded by this Conference as subjects of the highest importance to the federated provinces, and shall be prosecuted at the earliest possible period that the state of the finances will permit--"

There are two significant sentences following:

"The Confederation is, therefore, clearly committed to the carrying out of both these enterprises."

That was the opening up of the Great West and communication between the west and the seaboard. Then he says:

"I doubt if there was a member of the Conference who did not consider that the opening up of the North West and the improvement of our canal system were not as clearly for the advantage of the Lower Provinces as for the interests of Upper Canada."

HON. MR. HONES: Yes, I am familiar with that.

COMMISSIONER MacKAY: Well he is talking about the canal system there. Apparently the canal system and the Great Lakes would open the trade through to the Seaboard.

HON. MR. JONES: . . . He is speaking of it as part of the transportation problem towards the seaboard, perhaps.

COMMISSIONER MacKAY: Yes.

HON. MR. JONES: Yes, I think that is so.

COMMISSIONER MacKAY: Then the inference is that he is thinking of the St. Lawrence as the seaboard?



HON. MR. JONES: No, I would not say that necessarily followed because it is not the seaboard.

COMMISSIONER MacKAY: I am not saying whether it is or not, but it seems to me that George Brown is thinking of the St. Lawrence ports there.

HON. MR. JONES: Except that he says here--of course, we have brief citations, but I think that is perhaps the only one which might indicate that he had in view the St. Lawrence. He is also cited at page 108 and there is no doubt that he is dealing with the Maritime provinces at this point :

"It will make Halifax and Saint John

the Atlantic seaports for half a continent--"

That should be fairly plain--"the Atlantic seaports for half a continent."

(page 9029 follows)





COMMISSIONER MacKAY: He is referring to the Inter-colonial Railway.

HON. MR. JONES: No, he is referring to the Confederation. The whole thing is an endeavour to induce the Maritime Provinces, as we see it, to go into Confederation.

"It will make Halifax and Saint John the Atlantic seaports of half a continent; it will insure to Halifax, ere long, the establishment of a line of powerful steamers running in six days from her wharves to some near point on the West coast of Ireland - and it will bring a constant stream of passengers and immigrants through those Lower Provinces that never otherwise would come near them."

COMMISSIONER ANGUS: Mr. Jones, <sup>on</sup> the point of whether George Brown thought of the St. Lawrence Ports as the Seaboard, if you look at the top of page 100, - "I am in favour of this union because it will give us a seaboard at all seasons of the year," - that rather suggests they have a seaboard at some seasons of the year already. And the last line of that paragraph, - "The Intercolonial Railway will give us at all times access to the Atlantic through British Territory," - so that the suggestion in that paragraph seems to be that it is a winter seaboard that they were adding to the existent summer seaboard.

HON. MR. JONES: Well, I doubt whether that would be the construction, but "I am in favour of this union because it will give us a seaboard at all seasons of the year."

COMMISSIONER ANGUS: The next sentence, "It is not to be denied that the position of Canada, shut off as she is from the seaboard during the winter months - -".

HON. MR. JONES: Yes. Well, they had a seaboard in



the Maritime Provinces during the summer months.

COMMISSIONER DAFOE: Mr. Jones, looking at Mr. Galt's speech, which is quoted on page 98, - "Through these canals and the River St. Lawrence and along the railway systems of all the provinces, when hereafter connected, a great trade will flow in one uninterrupted stream, enriching in its course not only the cities of Canada, but also swelling the tide of a new commerce, we may hope to see called into being in the open Atlantic ports of Saint John and Halifax," - that does not suggest that there was ~~now to be~~ any further development of canals in the River St. Lawrence,

They were speaking in broad terms of the possibilities of the future, as is the habit of statesmen, and they assumed that this general increase in prosperity, including the flow of trade down the River St. Lawrence and through the canals would, in some way, operate to the advantage of the Atlantic Ports. But I do not think it is probable that Mr. Galt or Mr. Brown had the slightest idea that they were putting a stop to the development of the St. Lawrence, - the further development of the St. Lawrence by any statement made in what, after all, were campaign speeches in the Maritime provinces, or more deliberate speeches in the Parliament of Canada.

HON. MR. JONES: But even there, while they might not have disassociated themselves from the idea altogether of spending something further on the St. Lawrence and on the canals, still, they did not emphasize that as the main purpose of Confederation in the way of transportation, but all these remarks are directed to the people of the Maritime provinces.

thought they

COMMISSIONER DAFOE: Undoubtedly they foresaw, just as the people of the Maritimes saw, developments which



did not take place in the way of a flow of commerce. That has happened, unfortunately, many times in the history of Canada.

HON. MR. JONES: Of course, the whole scheme was to connect the Intercolonial Railway up with whatever transportation facilities they had through the canals and St. Lawrence, so that the Maritime trade would be developed. It did not necessarily involve, perhaps, a transcontinental railway, it was simply that these Ports of the Maritimes should be connected up with whatever there was in the canals and in the St. Lawrence.

COMMISSIONER DAFOE: Exactly. I do not think at that time they realized the law that railways cannot compete with water routes, and that there is a pressure which sends ships as far inland as they can go.

HON. MR. JONES: Well, especially when they have canals to go through, free, and all the ratepayers of the country pay for them. I doubt just on that point whether it would appear that if the proper charges were made for transportation through these canals, that the cost of such transportation would be any less than the cost of transportation by this Grand Trunk Railway, on account of its grades and on account of the low cost. We have in our brief a table showing the costs of transportation over the railway direct to St. John and Halifax, and, of course, when we talk about transportation by water through the canals it means that we have no overhead at all, - we take that free. Now, if the freight could be hauled over the Transcontinental Railway free, just the actual cost of hauling so many tons a mile without considering the cost of the road, the overhead, or put it on the same plane as the canals, I doubt very much if the proposition you mention in this age would be quite





correct, because railways can haul freight very cheaply. I have understood that Sir Edward Beatty said that if there was one good year in the west - I do not attempt to tell you anything about the west - that it would solve the railway problem, because they could haul so much grain over the roads as they are now constructed. And as was suggested on Saturday, it is all downhill on this Grand Trunk Pacific. However, that is more modern history than we are dealing with at the moment. But I thought, and I still think, that the only seaboard intended was the seaboard of the Maritime Provinces, because these statements were made in the Maritime Provinces, they were made for the purpose of inducing Nova Scotia and New Brunswick to abide by the terms, or some terms similar, to the Quebec Resolutions. And that is what I take it to mean. The statements were made in the Maritime Provinces, similar pronouncements as were admitted, and it is stated here " - - will flow in one uninterrupted stream", "great trade will flow in one uninterrupted stream, enriching in its course not only the cities of Canada, but also swelling the tide of a new commerce - -".

COMMISSIONER DAFOE: That was an expectation; they would build the road and link up with the canal systems of the St. Lawrence and the Western Railways, and after that the trade would flow. But there was a reverse expectation which events showed equally unfounded, that after the Intercolonial Railway was built, these provinces down here would become the manufacturing headquarters in Canada. With their access to the sea, the raw materials could be assembled here and the Intercolonial Railway would carry those products to Western Canada. As it turned out, they were illusions, but they were held as late as 1879, after an experience of twelve years of Confederation. Sir Leonard



Tilley justified the national policy in 1879 in the House of Commons by saying that the protective tariff would give the Maritime Provinces an advantageous position with respect to manufacturing.

HON. MR. JONES: Well, being the Finance Minister of Canada it was necessary for him to take that position.

COMMISSIONER DAFOE: I know he must have thought so or he would not have spoken for the scheme.

COMMISSIONER MacKAY: In respect to the statements you have here they may have been made in the Maritime Provinces, but these statements were also made in the Parliament of Canada.

HON. MR. JONES: I would not say that they were all made in the Maritime Provinces, but a very great many of them, and a great many more were made in the Maritime Provinces.

COMMISSIONER DAFOE: They were appearing around the country and were attending banquets, and these were speeches made at the end of the evening.

HON. MR. JONES: Well, perhaps so; it is a very good time to put a case over.

COMMISSIONER DAFOE: But as to the canal question, I find it very difficult to believe that the Upper Canadian Delegates had any conscious idea that they were creating an impression that the development of the canal system would cease upon the building of the Intercolonial Railway. You only have to read a book such as that which has just been written by Professor Creighton called "The Commercial Empire of the St. Lawrence" to realize that the development of the St. Lawrence was one of the fundamental purposes of the people of Upper Canada. They had to do it once the Erie Canal was opened, - a canal which took three-quarters of what



little trade there was on the St. Lawrence, - they had no option but to go ahead and supply facilities that would compete with the Erie Canal, or the whole trade of the West, while the season of navigation remained open, would flow through the Erie Canal to New York. They were face to face with conditions. I have no doubt they were completely sincere in their belief, just as the people of the Maritime Provinces were sincere in their expectation that once the Intercolonial Railway was built there would be a rapidly developing trade.

HON. MR. JONES: Yes. Of course, we do not say there was any expressed thought that the canals would be ignored in the transportation, and that these large railways, - continental railways would be constructed at that time, but the canal system, I quite agree, was contemplated as affording a link in the chain of transportation. But what we do say, - and it is a matter, of course, for analysis of these opinions, - that the people of the Maritime Provinces through those pronouncements were led to believe that trade would be developed through the Maritime Ports, not only in the winter season but throughout the whole year, a constant stream of trade. There is nothing said in these speeches about the Port of Montreal being built up and carrying on the trade, but it is always the Maritime Provinces that are going to have the trade continuously.

COMMISSIONER DAFOE: They were directing their attention, of course, to the Maritime aspects of the question, and I personally have no doubt that they really thought, as I think I can show, that the people of the Maritimes equally expected that the building of the Intercolonial Railway would have that effect.

THE ACTING CHAIRMAN: Mr. Jones, you do not claim that







after 1867 not one cent should have been spent on the St. Lawrence River, or on the canals?

HON. MR. JONES: No, but I say that the expenditure there was altogether out of proportion to what they had expended or what they were expending in the Lower Provinces. I do not say they should not have spent anything on canals, but I think, incidentally, that the people of Canada should not be charged with the whole cost of those canals for the advantage of certain sections of the community. We had to pay \$500,000,000., we have to pay the interest on that, and we have to pay the interest on the cost of the railways. We have to support the C.P.R. and pay the interest on the cost of the Transcontinental Railway, and in addition to that we have to pay the interest, practically, on the cost of the canals. Yet they are giving service through the canals for nothing, and that service is necessarily competing, when it goes to Montreal, with us here. But what we do say is that whether it was the design to use the railway or use the canals, still it was to be linked up, because the Intercolonial Railway would be of no use unless it were linked up with some service to the West. There may be a difference of opinion as to the construction of that paragraph, but we say the only seaboard is a seaboard that is available all the year round. You would not say that they have a seaboard when it is shut up for half the year or three-quarters of the year, - you would not call that a seaboard. I am speaking now of the actual construction.

COMMISSIONER DAFOE: Well, it borders on the sea, but the sea is turned into ice at certain times of the year.

HON. MR. JONES: Yes. I think the words of the Resolution rather have that meaning, that it was a seaboard open the whole year, that they were seeking to obtain.



The development of the trade between the Great West and the Seaboard was regarded of great importance, and improvements should be prosecuted, and so on. It seems to me the seaboard must necessarily mean a seaboard which would be available to the whole country during the whole year.

COMMISSIONER DAFOE: I do not question in the least that they thought, - whatever they had in mind when they said "the seaboard", - they had a sincere expectation, which was shared by the Maritime Delegates to London, that the building of the Intercolonial Railway would very greatly advance the material wealth and prosperity of the Maritime Provinces. I would not dispute that for a moment. There is a suggestion in this brief, - I think more than a suggestion - that the Maritime Provinces were not interested in the Federation of the Colonies or the building of the Intercolonial Railway until the Canadians descended upon them in the summer of 1864 and sold the proposition to them.

HON. MR. JONES: I do not mean to say there was not some settlement long before that.

COMMISSIONER DAFOE: "The people were contented, well-ordered and enterprising and there was no reason for New Brunswick to seek a union with Canada." Then on page 111: "There was internal dissension and financial problems so that some change in the political situation was imperative. They conceived the idea of a union in order to become independent of the United States." Now, do you not think it could be established by reference to historical records that the Maritime Provinces were much more active in promoting the idea of the Intercolonial Railway prior to 1864 than the Upper Provinces, and that they were more interested in Confederation?



HON. MR. JONES: Well, it hardly seems so when they were trying to form a Maritime Union.

COMMISSIONER DAFOE: The Maritime Union movement ran in two streams, it seems to me from my reading. The Governors were all determined to bring about Maritime Union, - Governor Sutton, Governor Gordon, and the Governors of Nova Scotia, and it is quite clear that the Officials of the Colonial Office were in favour also of the Maritime Union, and for a most peculiar reason; they feared the larger Confederation would be a step towards withdrawal from the Empire. That fact sticks out in all the correspondence for the preceding ten years. It is very curious that with that pressure behind Maritime Union, it did not emerge definitely as a political possibility until 1864, if there was popular support for it. Then both Tilley and Tupper, while they favoured Maritime Union, according to my reading of the records, did not, as was the case with the Colonial Governors, consider it as obliterating the idea of the larger union, but only that the Maritimes could go in as one province in place of three. I think that thesis could be strongly supported.

HON. MR. JONES: But nevertheless the delegates from Canada came down and intervened at Charlottetown and rather put a stop to the idea of Maritime Union, and advocated further negotiations.

COMMISSIONER DAFOE: That was the first year in which there had been any definite suggestion that they should actually meet to consider Maritime Union. It was based upon Resolutions of the three provinces in the early spring of 1864. The Resolutions, as I recall them, were very indefinite, - to consider a preliminary plan. Before the date or the place of that Conference was fixed the Governors got a letter from Lord Monck. The popular idea is that the Maritime Delegates had met at Charlottetown and







were immersed in the discussion of a Maritime Union when the Canadians came in and swept them off their feet. But the part taken by Canada in that Conference preceded the fixing of the date and as a matter of fact, Maritime Union was not even considered until the seventh day. What they did on the seventh day is a matter of dispute, because a contemporary account written by Palmer, one of the delegates, states that they only considered Maritime Union for one day, that a Resolution was suggested, but that it was never considered. Against that is a statement in Saunders "Life of Tupper", that Tupper suggested a Resolution - - -

HON. MR. JONES: Do you not think Sir Charles Tupper was instrumental in having that delayed until the delegates from Canada could be heard?

COMMISSIONER DAFOE: Well, that might be, but it was really a Confederation Conference, having regard to the fact that Canada asked to be represented even before the date or the place was fixed. This would suggest that they were in on it from the very start. It really became a Confederation Conference rather than a Maritime Union. It seems to be pretty clear that while the proposition of Maritime Union was in the air it was largely through the activities of the Governors, and it did not preclude the constant discussion of the possibility of a Federal Union. In the brief that the Province of Nova Scotia presented to the Duncan Commission facts are stated as to Maritime encouragement of a union of the provinces;

"Resolution re Confederation in Nova Scotia Assembly, 1854, a motion moved by the Leader of the opposition, James W. Johnstone." -

Resolved, - That the union or confederation of the British Provinces on just principles, while calculated to perpetuate their connection with the parent State, will promote their advancement and prosperity, increase their strength and influence and



"elevate their position . . . ."

Then "Nova Scotia Legislature takes Initiative, 1861".

"In 1861, however, a resolution was adopted in the Legislature of Nova Scotia, which as events worked out, may be considered the first link in the chain of negotiations directly leading to Confederation. Under this resolution, which was moved by Joseph Howe, then Premier, the Lieutenant-Governor was requested to communicate with the other provincial governors and with the Colonial Secretary, 'in order to ascertain the policy of Her Majesty's Government and the opinions of the other colonies, with a view to an enlightened consideration of a question involving the highest interest, and upon which the public mind in all the provinces ought to be set at rest!'"

- Then the brief goes on to say:

"The Duke of Newcastle, Colonial Secretary, replied in a favourable despatch which later was considered the warrant for actual negotiations. For the present, a conference of delegates at Quebec in the autumn of that year found it inadvisable to proceed with the scheme. To Nova Scotia, however, must be given the credit of this initial step, taken not under political duress but from the loftier motive of national policy."

I do not go beyond saying that the idea of Confederation was quite as prevalent in the Maritimes as in Upper Canada, and that so far as actual Resolutions submitted to the legislatures were concerned, the score is in favour of the Maritimes. Then when you come to the Inter-<sup>that</sup>colonial Railway, the record is very clear; the Maritimes



far more than the Upper Provinces wanted the Intercolonial Railway, at a time when there was no attempt to influence the Maritime opinion by <sup>but</sup> promises of the turning of trade, /just on the merits of building a railway to the Upper Provinces. The Maritime Provinces were keen for the building of the Intercolonial Railway, far more active than Canada.

HON. MR. JONES: As far as the Railway was concerned it was made a particular condition of Confederation, and was so stated. One can imagine that for a great many years prior to Confederation there was talk in the Maritimes, - there were Resolutions in the Maritimes, but after Nova Scotia turned down the Quebec Resolutions then it must be admitted there was need for some persuasive eloquence to be exercised by some person in order to turn the province the other way.

COMMISSIONER DAFOE: But the persuasive eloquence was before Nova Scotia turned it down.

HON. MR. JONES: Yes, that may be, but at the same time all those pronouncements were there and they were on the record, and they were quoted again the second time, and no doubt they had their effect in changing opinion in Nova Scotia.

COMMISSIONER DAFOE: Well, those representations were necessary to induce the Maritimes to go into the wider federation. There was undoubtedly a marked difference of opinion, I think, on political union, but the record is plain that the Intercolonial Railway would have been welcomed by the Maritime Provinces if it could have been built without Confederation, - without any of these inducements which were <sup>later</sup> held out/in those speeches. The record is really rather astonishing. It begins in 1851 or 1852, when Joseph Howe went to England and, as he thought, got a guarantee for a





road from Halifax to Quebec. He came back and went to Toronto, taking Mr. Chandler with him from this province, and that was followed by a visit to this Capital by Sir Francis Hincks. They went on to Halifax, picked up Mr. Howe, and went to England. They had arranged between themselves that this Province of New Brunswick would pay five-twelfths of the cost of that road, but the British Government pulled out of the arrangement because the route was to be through the Saint John Valley which they did not want. That was the first effort. About 1861 Mr. Howe apparently did nothing much except circulate among the provinces and in Great Britain trying to put over the inter-colonial proposition. Most people do not know that the Interprovincial Conference of 1864 was the last, and not the first of a whole series. There were three Interprovincial Conferences at Quebec within three years, the last of them being in 1864, and the earlier ones had to do with the building of the Intercolonial Railway. In the summer of 1862, based upon some preliminary work by Mr. Howe, there was an agreement which took the three Canadian Premiers, Tilley, Tupper and Sicotte to London, where they got a guarantee for £7,500,000. Tilley and Howe came home, thinking the matter was all arranged, but Canada was so lukewarm that Mr. Sicotte who stayed behind, upset the arrangement on the ground that there was a provision for a sinking fund, which Canada did not want. And the perfidy of Canada was very properly denounced by the Press of the Maritimes at that time. There was a case where Canada upset the works. The following year Tupper, who had succeeded Howe, was in Quebec trying to arrange for the building of the Intercolonial, and it was on that occasion that Sir Sandford Fleming was authorized by the Canadian Government to begin the survey.



Now, all those things indicate that the Maritime Provinces wanted the intercolonial railway and they wanted it for a reason which was set forth in the memorial to the British government by the Nova Scotia Government in the year 1857, if I can find the reference here. That was made by Mr. Johnstone, Premier of Nova Scotia. This is quoted from a memorial to the British Government by the Nova Scotia Government:

"An intercolonial railroad would give the means of communication at present wanting. It would open to Canada an Atlantic seaboard on British soil, from which she is now cut off; and it would offer to the Lower Provinces a ready access to the vast field of enterprise and progress-" - which is an indication that the economic conditions of Canada were not in a state of collapse - "the vast field of enterprise and progress occupied by their fellow subjects in the interior. It would prove a benefit of incalculable value should it be the precursor of, as it is an absolute necessity towards, a legislative union of Her Majesty's North American Provinces, - a measure essential to the full development of the power which their situation and character are calculated to confer and without which they never can attain the high position to which their united energies and advantages would lead them. While Canada remains cut off from communication with the Lower Provinces and with the Atlantic shore on British territory, the tendencies to alienation between her and the sister Provinces and to the approximation of all the Colonies to the United States must strengthen and mature."



And the government of Nova Scotia in its brief to the Duncan Commission comments:

"Here again, it will be noted, the Maritime Provinces entertained a lively hope that they would share in the internal commerce which an intercolonial railway would open up".

HON. MR. JONES: Of course, we are not bound by what was said by Nova Scotia before the Duncan Commission.

COMMISSIONER DAFOE: No, I am just citing that as an illustration of the attitude of mind in the Maritime provinces, which made it unnecessary for those elaborate promises to be made to induce them to come into an arrangement for building the intercolonial.

HON. MR. JONES: Yes, but conditions changed, and I am glad we have the brief as to the history of these propositions that no doubt you have gathered together during the course of a great many years experience, and it has been entertaining and also very instructive. But as I say we are not bound by what was stated by the Nova Scotia Government or what attitude they may have taken, or may take now in reference to that point. In that, however, is there not a reference to the Atlantic seaboard?

COMMISSIONER DAFOE: Yes, there is not any denial of the Atlantic seaboard.

HON. MR. JONES: Yes, but it refers distinctly to the Atlantic seaboard, meaning the Maritime ports, as I remember.

COMMISSIONER DAFOE: There is no doubt about that.

The advantage of the Atlantic seaboard was obvious, and of course the situation became very acute in the latter stages of the American Civil War.

HON. MR. JONES: I mention that what was intended perhaps by the expression "Atlantic seaboard" ---





COMMISSIONER ANGUS: Mr. Jones, do you think Canada should be bound by what the people of Nova Scotia said about their seaboard?

HON. MR. JONES: No, but at the same time it has been put forward and read as to what they said about other things. So what they said about the seaboard is just as important as what they said about some of the other things. We are not bound by either one. But with all, conditions change, the situation in the United States, the change about 1865 there, which was so detrimental, or thought to be so detrimental, to the interests of Canada, that there was a new impetus given to the statesmen of Canada to induce this confederation movement.

COMMISSIONER DAFOE: No doubt, they were alarmed.

HON. MR. JONES: And that was it.

COMMISSIONER DAFOE: They were alarmed at the moment.

HON. MR. JONES: And at the moment they came down upon us and tried to persuade us to go in. And of course there were negotiations and there were resolutions all around, the provinces were all seeking some way out. Just the way we are now seeking some way out, and expressions are used and so on. Before that no doubt the provinces down here, Nova Scotia was suggesting all kinds of things, and you will hear suggestions made in Canada now that we ought to have a communistic government. and you could get resolutions and you could get all kinds of things for any kind of doctrine. But after all, it is a concrete fact that whatever may have threatened up there in Canada, down they came like a wolf on the fold, I was going to say, to induce us to go into Confederation.



Now, in reference to the railway, of course there was no doubt we wanted the intercolonial railway, but we did not want it 260 miles longer than the natural course of it, and when that was decided upon it did not appear so attractive to our people as it did before, when the proposition was made that it would come through the valley of the St. John River here and reach the maritime ports as a reasonable mileage basis. But I do not know that I can say anything further. We have cited the references in our brief.

COMMISSIONER DAFOE: I would like to put on record, because I think it is of value, a statement made by Sir John A. Macdonald at Halifax, during their perigrinations. I think it throws some light on the attitude of the Canadian delegates.

"I will not ~~continue to detain~~ you at this late period of the evening" - you see, it was late at night - "but will merely say that we are desirous of a union with the Maritime Provinces on a fair and equitable basis; that we desire no advantage of any kind, that we believe the object in view will be as much in favor as against these Maritime Colonies. We are ready to come at once into most intimate connection with you.

I don't hesitate to say that with respect to the Intercolonial Railway, it is understood by the people of Canada that it can only be built as a means of political union for the colonies. It cannot be denied that the Railway, as a commercial enterprise, would be of comparatively little commercial advantage to the people of Canada. Whilst we have the St. Lawrence in summer,



and the American ports in time of peace, we have all that is requisite for our purposes.

We recognize, however, the fact that peace may not always exist, and that we must have some other means of outlet if we do not wish to be cut off from the ocean for some months in the year. We wish to feel greater security - to know that we can have assistance readily in the hour of danger. In the case of a union, this Railway must be a national work, and Canada will cheerfully contribute to the utmost extent in order to make that important link without which no political connection can be complete."

And then he goes on to say that it would be of great benefit to Halifax.

I think that is a pretty clear statement of what was really in the minds of the people of Upper Canada.

HON.MR.JONES: Yes. There is a statement here by Mr. E.P. Tache. The idea would be that in the development of trade it would have to be a continuous development, continuous operation, in order to prove effective. They could not operate the ports during part of the year and have them lie idle during the rest of the year. You would have to have a continuous traffic on account of the incoming and outgoing traffic throughout the whole year. Mr.Tache's remarks are quoted on page 96:

"We laboured under a drawback or disadvantage which would effectually prevent that, and he would defy anyone to take a map of the world and point to any great nation which had not sea-ports of its own open at all times of the year."

And what we say is that from that and other statements





our people here were justified in believing the promises extended to have these ports developed as national ports and of course we say that nothing was done with reference to them for forty or fifty years after confederation. There was not even any assistance given in the construction of winter ports for thirty, forty, or fifty years. The funds were available. They spent millions upon the canals in the St. Lawrence and on the port of Montreal, but they spent nothing with us, even, after all it is true that this was only to be a winter port development. Yet they did not fulfil the terms. The records that are introduced here show that there was no attempt to create a winter port at St. John or a winter port at Halifax. The city of St. John started in and did a lot of it themselves with what little development there was, and the C.P.R. went in about 1890 or along there, we mentioned in here, and they created some business for the port of Saint John in the winter season. But surely this was a guarantee that trade would be developed in the winter anyway. So we have two propositions to show it ought to have been developed. We should have had harbour facilities, and it could only be developed during the whole year, and then we say even if it only meant a winter port development, it certainly at least meant this, there was no attempt to carry it out.

COMMISSIONER DAFOE: When you say they failed to carry out the bargain you mean of course the Dominion Government?

HON. MR. JONES: I mean the Dominion Government.

COMMISSIONER DAFOE: Well, is not your brief and the statements which you have made a very severe indictment of the very notable men the Maritimes sent



to Ottawa during those years?

HON. MR. JONES: Perhaps so; I cannot help that. We do not intend to cast any reflection ---

COMMISSIONER DAFOE: Do you not think a person defending them might say they did not interpret the understanding reached at London on quite so wide and definite a scale as the interpretation which has been given in this brief?

HON. MR. JONES: Well, evidently they did not put forward the proposition as strongly as we hope to put it forward.

COMMISSIONER DAFOE: Now, Mr. Jones, just look at it: With the exception of the first Parliament of Canada, no Government has held office in Canada that has not commanded a majority of the members from the Maritime Provinces.

HON. MR. JONES: I grant that.

COMMISSIONER DAFOE: For the first six years of Confederation the Government was really a triumvirate of Macdonald, Tilley and Tupper. Then, in the MacKenzie government the leading representatives of the

Maritimes were Isaac Burpee, who represented the Port of Saint John, and A.G. Jones who represented the Port of Halifax. And then beginning in 1879 until the year 1920 either the minister of finance of Canada or the Premier of Canada was a Maritimer continuously. The Ministers of Finance, beginning in 1879 were Leonard Tilley, A.W. McLellan, Sir Charles Tupper for a single session, Sir George Foster, W.S. Fielding. Four of the ten premiers of Canada were Maritime men, three of them representing the Maritimes. They were admittedly among the most distinguished and able of our Canadian public men. They



were men of great influence. And when you read the brief and see the measure of their failure, which I will not give in detail, it is all there, and you have to admit that they must have known about this contract, because in the earlier days two of them were parties to its making, if your brief is right the Maritimes were most unfortunate in the representation they had in the Dominion Government during that period of fifty years.

HON. MR. JONES: I only have this to say, and I surely do not want to take the responsibility, or have the temerity of reflecting in any way upon these public men, they were certainly very, very able men, but I will have this to say: there are two interests always in politics, as well as in most lines of activity. One interest is the one in which we perhaps have a sympathetic interest, and the other is the interest which we are serving at the moment. Now, with all due respect, we have, I think, in the experience of this country, seen men go from the province where they were very strenuously engaged in the assertion of provincial rights, to the Dominion, when they seem to lose sight of what they had advocated in the province. It is a larger field, they are working for a new employer. They are working under difficulties, they are working and controlled by different interests, it is a broad country, they are controlled by different provinces. They cannot assert a narrow provincial view, which has to be carried through Parliament. He may be a premier, he may be a minister of finance, it does not matter who he is, he gets to Ottawa and sometimes they lose sight of the provincial interest. I do not want to even suggest any particular examples of it, but it is so clear, it seems to me. And I think I





may say with all due respect to Mr. Pugsley that in connection with that fisheries matter he advocated it very, very strongly, as I said, in 1903 and '04. And he went to Ottawa, into the Dominion Government, in 1907. Of course he was not many years there, he had not many years there in power. Sir Wilfred's government went out, as we know, in 1911 on the reciprocity issue. Then others who were interested in the province, and the Honorable Mr. Hazon was on record in the early days as favoring this fisheries claim of the province, he went into the Dominion Government, as we all remember, for a time and the interests of New Brunswick somehow or other, - and I am sure I do not want <sup>to</sup> criticize either of those gentlemen for whom I have the highest respect, but I am criticizing the system. It is wrong to suppose that a man goes up there into the government as representing New Brunswick. He represents the whole of Canada. He has to carry his measures with the permission of the whole of Canada. So that what I do say is that there was and always has been, regardless of what was put through in Ottawa, an agitation, there has always been an agitation that this traffic, especially this export traffic in the West, should go through the ports of the maritime provinces, but there were no proper facilities provided and no proper arrangements made, because it is a matter of public record, a matter of history, that in the Port of Saint John, as I say more particularly, the city did something and they ran along, but there was agitation and always has been. In elections we had cartoons about Portland, Maine, the cow was being fed in Canada and milked in Portland, Maine, and so on. And as I say efforts seem to have been made by some parliaments, some governments of the Dominion, in implementing such a thing. For instance, there is the grant to the transeontinental railway, which was said



yesterday had the design apparently of requiring produce to be shipped through Maritime ports. Grades were made so it could be carried, and that was the excuse for it largely, that it could carry the grain, enormous quantities, down to this seaboard in the Maritime provinces. It did not work out because succeeding governments said "Oh, well, we will do the best we can except it is otherwise routed by the shipper." We say it should be carried through Canadian ports, must be carried through Canadian ports, so far as the railways have any control over it, unless it is otherwise routed by the shipper. And of course that was a clause which really made it of no effect, there were no teeth in it. And what we say is that that principle seemed to have been recognized all through Confederation and recently the experience is that something could have been done sixty years ago about it. - "Except as otherwise routed by the shipper". Something could have been done sixty years ago to compel this traffic to go through these ports. They compel it now. The Dominion Government compel it now. They make a concession in respect to imports coming through Canadian ports, with regard to the duty. And of course we all know that in connection with the export of grain if it is shipped through British ports it enjoys a certain amount of protection. The result is today in Saint John there has been relatively a great increase in traffic through Saint John, but we say it could have been done sixty years ago. They paid no attention to it. They are evidently paying attention to it now.

Perhaps this is all by the way. And perhaps not very material, but that seems to be the position we take in the matter and I do not know that I could say anything further.

COMMISSIONER DAFEE: Well, I am very much obliged,



Mr. Jones. I might say something as to why I have carried on this discussion, this friendly discussion, which I think has perhaps been of some service. However inadequate this Commission may be in discharging the task which it has assumed, it has had this important consequence: - that there has been a collection of documents which are not merely affairs of the moment, but state papers; they will go into the archives, into collections and university libraries, and they will be the raw material for historic and economic research for the next forty or fifty years. I initiated the discussion in order that there might be a gloss upon this part 2 of the brief, which as I read it, is a very, very serious indictment of the integrity and statesmanship of the successive governments of Canada including, as I have said, the members of those governments who represented the maritimes. I would not like the inference to be drawn from anything I have said this morning that I do not fully appreciate the fact that the confederation scheme has not worked out as hoped. It has fallen very, very far short of what the people of Canada and the people of the Maritimes expected it would result in, and that there is a situation down here which calls for the wisest statesmanship that Canada can command is not to be questioned.

To refer to something which has already been mentioned, there is no doubt in my mind that the whole National transcontinental scheme was a conscious attempt to deal with the failure of the earlier transportation arrangements to bring the traffic of Western Canada to the maritime ports, which in turn has failed. Whether it has failed irredeemably remains to be seen.

On my own behalf and perhaps on behalf of my colleagues who may have been interested in this little discussion I would like to thank you very warmly for the reciprocal nature of your contribution.







HON.MR.JONES: And I am sure I desire to reciprocate that, and to state that I am very glad of it, very glad of the discussion, because in the few months that I have had more particular occasion to look into these historical questions, I quite realize that I have fallen far short of obtaining anything like the grasp of the subject that you, doctor, have necessarily obtained through your actual life and connection more or less with public matters of that kind. And another thing, I am rejoiced at having that on the record, because it will enable me perhaps on some future occasion, before we get through with our hearings, because I understand there is to be a general hearing at Ottawa, a discussion, to look into matters which the record will show, to which you have referred.

I would like to add another statement. I said at the outset of the presentation of part 2 that the government of New Brunswick in any statements it made in this part or any other part did not desire to make any criticism or reflection upon the character of any public statesman of Canada or upon any political party. And I must say that I think you used the word integrity a moment ago. I wish to dissasociate myself and the province from any desire to reflect upon the integrity of any of the public men. I do not say that. We do not say that. We do not say also that any pronouncements were made through trickery or anything of that kind. But we do say that it may have been - no doubt they were made in good faith, so far as we know, - but they did affirm these inducements, that is as far as we go, they did affirm these necessary inducements in making the decision of the Maritime provinces possible. But I do not wish to reflect for one moment on the integrity of any of those men. Their disregard - I will not say disregard, but their,



you might say, thoughtlessness, if you like, upon provincial matters, upon being relegated to a higher position in Canada, is but a natural consequence.

I do not want to suggest there was anything improper at all. They were in a wider field, and there it was. They might have lost sight of these things. And I admit the claim has not been presented in just the terms that we are presenting it here. But we felt it our duty to the province, to the people we represent, to lay these matters before you gentlemen.

I wish to say also, that if I may speak, so far as my position as counsel is concerned I certainly may, that I have been more than pleased at the courtesy and goodwill that has been shown to me, Mr. Chairman, personally by you and the other members of this Commission.

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HON. MR. JONES: Yes, Mr. Chairman, this finishes the submission for the Government of New Brunswick.

THE ACTING CHAIRMAN: Mr. Attorney-General, is the government prepared to make a statement in connection with the question we asked the other day, on the amalgamation of the three Maritime provinces?

HON. MR. McNAIRN: Yes, Mr. Chairman, I would like to say at the outset that the Premier asked me, this morning, to convey to you a message expressing his deep regret that because of his indisposition he is unable to be here this morning.

THE ACTING CHAIRMAN: He is better, I hope?

HON. MR. McNAIRN: Yes, and he believes that he will be able to get up some time to-day.

There has been a submission to the government of a written list of questions which, as you can readily understand, we have not had an opportunity of considering. They will be considered, and we will communicate with the Commission in due course as to the extent that we can go in answering those questions.

There was, however, submitted to the Premier on the opening day the question to which you have just referred, the matter of the union of the Maritime provinces. I think we can give you our answer to that question in a very few words. I might say that this proposal has been heard from time to time in this part of the Dominion as well as in other parts. We have noticed discussion and suggestions concerning it in other places, especially as to the benefits which might accrue from such a union. Might I, in the first instance, give to the Commission the view which the Duncan commission had on certain phases of that question. In its report,





the following passage is found: in regard to that suggestion.

"We feel that we should express the view that so far as a saving in the overhead expenses is concerned, we are not seriously impressed with the argument of any financial saving which would arise could materially affect the present condition of their finances, even if Maritime union would produce<sup>the</sup>/other advantages which it is alleged would result."

Now, we will admit that the suggestion is interesting from an academic point of view, but in our opinion is a matter which affords no solution of our problem.

In our view there is no real desire in New Brunswick for such a union, nor does the suggestion hold any merit from the point of view of economy or efficiency.

I believe we are closing our case, Mr. Chairman.

THE ACTING CHAIRMAN: You could always reopen it if you liked.

HON. MR. McNAIRN: In conclusion, I would like to take advantage of the occasion to express to you, Mr. Chairman and Members of the Commission, the great pleasure which we have experienced, on our part, in having you with us. We shall look forward with a sense of anticipation to the results of your deliberations as reflected in your findings and recommendations.

Of course, we cannot foretell what the reaction of this province may be to those findings and recommendations, but you may rest assured that in any event the reactions of those of us who have taken part in this hearing will be tempered and mellowed by recalling the courtesy, dignity and kindness which has emanated from you during these hearings.

THE ACTING CHAIRMAN: On behalf of my colleagues and



myself, I wish to express our sincere thanks to you and the rest of those who have been associated with you during your presentation. You have been extremely lavish in your hospitality and we wish you to accept our sincere thanks for it. You spoke of your reaction after our report is published. There is one thing which I would like you to bear in mind, and that is that this is an extremely difficult problem which we have before us. However, we will do our best.

Now, this afternoon, if you want to reopen your case, we may perhaps be through about half past one, but if at any time you wish to reopen your case, I am sure that my colleagues will always be willing to listen.

I think we will go on with the Union of Municipalities' brief which will be presented by Mr. T. H. Whalen.

MR. T. H. WHALEN, Chairman of the Committee, was called.

MR. T. H. WHALEN: Now, Mr. Chairman, and Members of the Commission, I wish to take up as little time as possible in presenting this brief. I know that you have had an arduous week here, and that you are anxious to get away.

THE ACTING CHAIRMAN: We are anxious to go, only after our work is finished.

MR. WHALEN: However, there is always a limit to everything, even patience. I do not know that it would serve any useful purpose if I read this brief and commented upon it.

THE ACTING CHAIRMAN: Perhaps you would like to give an outline of the brief and comment upon any points which you would like to stress.

MR. WHALEN: We have touched, in the opening, upon many of the outstanding problems with which these



municipalities are faced. These problems are: tuberculosis, unemployment relief, hospitalization, curtailment in revenues resulting from federal and provincial governments invading the field of taxation and legislation taking away from the municipalities taxation rights which they formerly possessed. There is also the gradual acquiring of property by the provincial and federal governments, property which is not taxable because it is owned by the governments and which was formerly taxable. There is an excess of this property reverting to the Crown which is consequently exempt from taxation. There is the problem of the inability of the municipalities to collect taxes due to the rapid increase in federal and provincial taxes, levied by way of income taxes. There is the direct tax imposed on the people, a typical example of which is the great increase in truck licenses and gasoline taxes.

Now, I have no doubt but what the question of tuberculosis has been well-presented to you, but in any event I would like to add a few words, if it will not take up too much time. I might call your attention to these phases of the tuberculosis situation. You will find that it occurs in those section of the province where expansion is greatest. Now, if you would, when you have all these statistics available, you will find that tuberculosis is more prevalent in the northern part of the province. I have here a map showing the Crown lands--perhaps if I was able to place it before you, you could get a better idea of what I mean.

THE ACTING CHAIRMAN: Could you file it with the Commission.

MR. MALEN: I suppose I could file it.





THE ACTING CHAIRMAN: Is it the only copy that you have?

MR. WHALEN: I received this copy from the Crown land office, so I suppose that they have some more. I would like to refer to it slightly.

THE ACTING CHAIRMAN: At this time, the brief might be marked as number 375 and then the map can be marked as exhibit number 376.

EXHIBIT NO. 375: Copy of the brief of the Union of New Brunswick Municipalities.

EXHIBIT NO. 376: Map, showing Crown lands in red.

MR. WHALEN: Now, referring to that map, the red represents the Crown lands and the growth of the province, is contained largely in that area. I think you will find that wherever the red predominates, it is true that tuberculosis is more prevalent in that area as well. The counties of Madawaska and Victoria both have very little Crown lands. The county of Restigouche is shown at the top, then Gloucester and Northumberland; those contain a large amount of Crown lands and also a large amount of tuberculosis. By reference to the statistics, you will find that the other sections, the sections in white, with the exception of this other corner here, is where the population is falling off. If you refer to the table at the back, the second page from the back, you will see that Carleton has dropped off as well as Charlotte. Some of the other counties which have dropped off are Kings and Queens.

THE ACTING CHAIRMAN: Is that a summary of the costs of Tuberculosis?



MR. WHALEN: No, it is the table next to that. The growth of the province being in the counties of Victoria, Madawaska, Restigouche, Gloucester and Northumberland. The bulk of the growth, with the exception of the cities has been in those areas, and tuberculosis is also more prevalent in those areas. Unemployment relief is heaviest in those areas so that there must be some relationship between the growth of the province and unemployment. In other words, where the population is dying out, there is less hardship.

There has been so much presented in the provincial brief and it has been presented so well that it is scarcely worth my while to refer to it. I might direct your attention to page 23 of the provincial brief where it refers to municipal taxation and also to page 43:

"The municipalities are no longer in a position to contribute in any appreciable amount toward the expense of public health services and the burden in future will fall practically altogether upon the province or the Dominion."

We are in accord with these remarks.

Passing over the bulk of the brief, we come to hospitalization on page 6. You will see the way in which hospitalization has grown to be such a burden on the municipalities. In those sections of the province which are marked in red on the map, they are not and have not for some time been able to carry on that burden. The result is a heavy indebtedness by those parts, which is largely borne by the provincial government at the present time. I think both the municipalities of Northumberland and Gloucester owe the provincial government large sums of money for hospitalization. These are



sums, which, perhaps, they will never be able to repay because conditions are not improving. There are some figures given there on page 6 which will give some idea of the situation. Some idea of the situation may be gained by the fact of the report of the provincial hospital for nervous diseases shows that on the 21st of October, 1937, Restigouche owed \$38,438.00, Gloucester owed \$58,756.00, Northumberland owed \$44,188.00, and Kent owed \$28,468.00. Now, those are sums which it is practically impossible for the municipalities, under existing conditions, to repay. As I say, conditions are not improving, conditions have been going backward. I do not think that there is any doubt about that. In this respect, I might refer to the brief which was prepared by some business men of the municipality of Northumberland a few years ago. This is taken from the Financial Post published on February 8, 1936. It says that Northumberland county, N.B., has a deficit of \$78,000. in 1935. It should be pointed out that if financial conditions are not immediately remedied, it will mean defaulting. Revenues amount to \$89,205.00, while expenditures total \$168,000.00. The excess of expenditure over revenues, for the past two years has been \$229,000.00. Tax arrears, the only realizable asset, amount to \$227,000.00. I think it is fair to say that not more than \$100,000.00 of that, at the most, would ever be collected.

Returning to page 2 of the brief, we find the representation that the provincial and federal governments have invaded the field of municipal taxation. This is a reference to the income tax. After all, taxes must be paid out of income. There cannot be any question about





that. It does not matter for what it is taken, whether it is an income tax or whether it is levied in some other form, it must be paid out of a man's income. The more that is levied upon him by the federal and provincial governments, the less he has left to pay his municipal liabilities. The result of this is, of course, the huge deficits which exist in almost every municipality in the province.

The next item is that of legislation taking away from municipalities the taxation rights which they formerly possessed. This might go hand-in-hand with the revenue-producing government property. For instance, the federally-owned railway would be one example. I think in the province of Ontario and in the province of Quebec as well as the western provinces, the railways do pay taxes. There is no doubt that the company-owned roads do, and I am quite satisfied that there are certain revenues paid by the government-owned railway in the province of Quebec as well as in the province of Ontario. These sources of revenue are taken away from our municipalities and there are some of them through which the government railways pass. The C.P.R. at least, pays taxes in the Saint John valley district, but not in other sections of the province and neither does the government-owned railway. This aspect of the matter also applies to such institutions as liquor stores. Formerly, the liquor business and other business as well, were in the hands of private individuals who paid taxes on their income derived from those sources. Now, this has been taken over by the province and we no longer have any revenue from that source. This would also apply to government garages where repairs are made



to government equipment. Under ordinary circumstances, this equipment would go to the ordinary garage which would pay taxes, taxes on equipment, income and so forth. We are deprived of these things now; The things which we formerly had a right to tax we now have not the right to tax. The same thing is true of government office buildings. Formerly these buildings were owned by individuals and were taxable. They were taken over by the governments and have become no longer taxable. These sources of revenue have been taken away from the municipality. There is also the prospect that in the government housing scheme we might run into very serious difficulties in that respect. For instance, if the government were to build houses--at the present time, there are properties reverting to the Crown under the Farm Loan Board. If a person fails to pay these loans, the property which was formerly owned by an individual and was subject to taxation, immediately goes back to the Crown. When this happens, the municipality has no longer, the right to tax that property. Of course, a municipality can only tax real estate, personal property and income which it may find within its borders and sometimes, it cannot even do that. Quite often the municipality finds that the right to do this has been taken away.

With regard to certain companies--the governments appear to have been very kind to some companies, particularly to the New Brunswick Telephone Company. There was a time when the New Brunswick Telephone Company paid taxes; it was always subject to taxation. It was exempted in some places, but in others, it was not, and it was taxed. There was a new setup created by legislation, a



few years ago. There was a different setup altogether, and the result was that most of the municipalities were deprived of that revenue. Those places which did get revenue from the company, got a very meagre amount, indeed, now.

Now, the effect of some of this legislation,--the gasoline tax and motor license fees. We have, perhaps, gone a little outside the scope of this commission in dealing with such matters. This is perhaps a matter which touches upon the relations between the province and the municipality, but it ties in with the revenue-producing government property. Let us consider the case of a man with a motor truck. When he has bought his license and has paid his gasoline tax, he is very often obliged to run a bill at the garage, for the gasoline. In other words, the garage mechanic and the garage, both subject to municipal taxation, have to make up for that. The truck owner pays out a substantial amount in federal and provincial taxation because, after all, he does pay quite a lot in the way of taxes to the federal government when he buys a motor truck. Much of this spread is provided for by the garage mechanic or the filling station that bona fide gives him good gasoline and does not get paid for it. For this reason, the garage mechanic is not so well able to pay his municipal taxes.





On page 3 and page 4 particularly you will see some statistics as to just where unemployment has landed some of the municipalities. Of course, all the municipalities do not have that problem. As I say, those municipalities in the Southern part of the province, where they have very little Crown lands, and where the population is decreasing, have not got and they did not have the same unemployment problem that we did have in the Northern section of the province. Now, there are two reasons for that: The first is because they have the taxable rights in the whole of the lands within their borders. Second, they share in the revenues which we pay to the Provincial Government for privileges in the Crown lands within our borders. In other words, take the County of Northumberland for instance, there is about three-quarters of it owned by the province. The revenue derived from that three-quarters may be used down in King County to build roads and bridges, while no revenue comes from King County up to Northumberland County to help us to meet our unemployment situation.

COMMISSIONER MacKAY: You cannot collect a business tax, or anything of that sort?

MR. WHALEN: They do not come near us so that we can catch them. Now, there is another little matter which is not very important but which shows every little way in which the municipality gets a slice taken out of it. That is, the question of the administration of justice.

THE ACTING CHAIRMAN: The jails?

MR. WHALEN: Yes. Take an Indian, for instance; he is a ward of the Federal Government, he is on a Reserve. It is too bad we cannot keep him there, but we cannot. He wanders around and comes into town or gets into a municipality and he gets drunk and he becomes disorderly, and he gets into a row and is put in jail. Now, our contention is



that the Federal Government, being his Godfather, should look after him; if he gets in jail they should pay for his keep there, and they should pay for the prosecution.

COMMISSIONER MacKAY: You do not suggest the Government provides the liquor?

MR. WHALEN: He makes his beer, and he gets drunk on that.

THE ACTING CHAIRMAN: This was very forcibly brought before us in Nova Scotia's submission.

MR. WHALEN: Well, I will not dwell on it except to repeat that we do not think we should have any responsibility for looking after the Indians when they get into trouble.

Now, on page 8 we have made some submissions. First, that the prevention, care and treatment of persons exposed to or suffering from tuberculosis be assumed by the Federal Government as a preventive measure. This is certainly beyond the phase of a local malady. Second, that a national policy on employment be adopted by the Federal Government to include Old Age and Widows' pensions, unemployment insurance and hospitalization in general whereby the burden may be placed more generally on the people of the province as a whole. That, I think, perhaps with apologies to Mr. Jones and the brief which he so ably presented, shall be done.

COMMISSIONER ANGUS: Should it be the province as a whole, or the Dominion as a whole?

MR. WHALEN: Well, it can be either one so long as we get clear of it. Then Number 3, that no additional services be imposed on municipalities by either the Federal or Provincial Government without creating a definite taxation source for the adequate financing of such services. Now, Governments have been continually unloading things on to the municipalities. I remember that years ago the cost



of maintaining an insane person was about \$1.00 per week. I think it has now grown to \$5.00. That is only one instance. Hospitalization has reached the scientific stage now where a hospital, if they pick up a man on the street and find out where he belongs, can treat him as they will and charge it back to the municipality, regardless, and that is only one of half a dozen schemes that touches the pockets of the municipalities. One other, and this is also with apologies to Mr. Jones, but it is one matter which is of serious moment to the municipalities at the present time, because it will be a very big item now in municipal expense, -- it is a very big item in municipal expense at the present time, and that is the question of education. I am fully in accord with the printed word in the Government 's brief with regard to education, but in the submission of it as reported in the Press -- I do not know the name of the paper I secured this from, but it is headed "Shake-up needed in the school system ", and there are certain things advocated which I can really predict will travel into big money as far as the municipalities are concerned, and it is a matter which has travelled into big money within the last few years. I brought with me some of the reports of the Town of Newcastle covering a number of years to show how the cost of education has jumped in the town. I note that the Director is reported to have said that education in the province is still in the ox-cart stage, and that it has not improved very much in the last forty or fifty years. Well now, it has not been because of want of money, and if a shake-up is needed -- and I think a shake-up probably is needed -- I would think it is more of an intellectual shake-up than a financial one. I am going to read to you the cost that has been put on the municipality of the Town of







Newcastle in the last thirty years. The report for 1901, the first year of the Town's incorporation, showed that the school board was allowed for school purposes \$3,300.00. In 1908 it was about the same, \$3,910.00. In 1921 it had increased to \$12,900.00. In 1923 it had jumped to \$20,900.00, and it reached a peak in 1931 of \$33,000.00.

THE ACTING CHAIRMAN: Had there been a large increase in the population?

MR. WHALEN: We had practically no increase in the population. So that as far as the municipality is concerned - and which I think is general in most of the municipalities in the province, it has not been for lack of finances that education is still in the ox-cart stage. I feel, and I cannot help but pass this remark, in view of the fact that these things have been unloaded onto the municipalities, and this is one of the things which we cry out for relief from in our submission no. 3; and that is that no additional services be imposed on municipalities by either the Federal or Provincial Government without creating a definite taxation source for the adequate financing of such services. Education takes almost one-half the revenue of the Town of Newcastle, and I think that is pretty general throughout the province. Any attempt to shake up or change or re-organize the educational system of the province should keep in mind any educational system that does not permit of full expression of the rights and privileges of minorities is bound to fail. The right of the parent to educate his child is a natural law, and state control of education has been the major cause of the civil strife in countries that have adopted it. There is nothing as yet to indicate that state control of education means improved education. Centralization of educational control is no more desirable than



centralization of wealth or political power.

I have given you the figures with regard to the Town of Newcastle; as I said, in 1930 it had reached the figure of \$33,000.00, and it has stayed practically at that figure ever since. It dropped down a little and is back to that at the present time. Statistics are not always reliable, and the deduction to be drawn from them may be wrong. Illiteracy may or may not be the result of our school system, In those sections of the province which are marked in red, and where the growth of the province has been greatest, are also, I think, the greatest places for illiteracy. Now, pioneering does not pay, and the pioneer goes into the woods to hew out a place for himself, and he has to make his children scratch for a living, and they do scratch and they do not have time for education, because if they do they will find that there is no meal ready for them when they get in at mealtime. Now, that is, to my mind, part of our trouble with respect to illiteracy; low wages, unemployment, and unemployment means low wages, because there are so many people looking for the same job that there is bound to be great competition and employers will take advantage of that, and they do take advantage of it as we all know very well. So that a good deal of our illiteracy, as I say, is found in that section of the province and will probably not be found to any great extent in those sections of the province where the population is dropping off.

Now, the suggestion made in the presentation of that part of the brief, is with regard to reorganization, and the trend is toward the extending of vocational education. I have no objection to vocational education, I think it is a good thing, but it can be and is abused to a great extent. A great deal of money has been spent and can be spent, and



the municipalities have to pay it, and there is no remedy for it. Now, just what advantage there may be to the youth by giving him a course in woodworking or shop, as it is called, when he has to go out and spend the rest of his days peeling pulpwood is beyond me. Our conditions have to be taken into consideration and should be taken into consideration in any reorganization of a system of education which will put a tremendous load upon the municipalities of the province. It is about as practical teaching cabinet making to boys who are going to earn their living peeling pulpwood or sawing logs as it would be to start an agricultural course on board a Norwegian tramp steamer. We are essentially a bilingual people; we are necessarily a bilingual people. Any reorganization which does not take that into consideration is not going to meet with the approval of the people of this province. A good deal of money is spent in the teaching of French by people who do not know it themselves. I was somewhat amused to read the report of the Department of Education, from a school which I know very well, and which referred to the fact that conversational French was taught in Grades 7 and 8. I happen to know there is no one on the school staff who can hold a two minute conversation in French. Now, just how they could teach conversational French is beyond me. That is one of the big items which we submit in our brief, item no. 3, that no additional services be imposed on municipalities by either the Federal or Provincial Government without creating a definite taxation source for the adequate financing of such services.

We also ask that improved and revenue-producing Crown property and government commercial enterprise be made subject to municipal taxation. There is no reason why, if







the government goes into business, whether selling liquor or running railways, or running buslines or anything else, they should not be taxed by the municipalities who, to a great extent, render them services. Take the Town of Newcastle, for instance, we build roads and we maintain them and we have to pay a gasoline tax to drive our own fire trucks over our own streets. We supply services to the Federal Post Office, we supply services to the railroads, we build streets and we build them really on the railroad's own land, which we have no right to do, but because the public cannot get there we have to build roads to their stations, and we maintain them at our own expense, and the railway will not pay us for building them.

We are sadly in need of better trade relations in our natural products with the markets of the world. You know as well as I do that the trade relations in the Maritime Provinces must always be north and south. Our markets are to the south of us. We have tried western markets and they have not proved very satisfactory. Our markets are to the south, with neighbors with whom we have no direct, official standing; it must be done through Federal Agencies. Our suggestion is that there should be trade agencies to maintain foreign markets. Another thing which enters directly under the Federal Government and which affects the northern section of the province is that the fisherman, the private individual, has not the facilities and has no way of acquiring the facilities for handling the product of his own labour. His product is bought up by a few concerns who reap the profits and let him do the work. They say they take the risks as well, but where the world's supply of certain fish is right off the coast of Northern New Brunswick there should not be very much question of taking much risk. Perhaps they



do, but if they do then it is something which I think is directly at the door of the Federal Government, and for which they should provide the remedy and should not look to the Provincial Government to supply the remedy; that is to say, storage for the product, and orderly marketing.

Number 6, I suppose you have had it in so much abundance that I will not touch upon it. Number 7 I have already dealt with. My colleagues here have asked me to amplify my remarks in regard to tuberculosis. I appreciate that you have heard a lot about it - -

THE ACTING CHAIRMAN: We have had many briefs on that subject.

MR. WHALEN: In this province it has reached the stage where there are not facilities available. In order to get a patient into a hospital here they have to turn another one out. It is absolutely beyond the control of the municipalities and beyond the control of the province. To do anything with it, either as a provincial or even as a municipal matter, would be entirely out of the question. There is nothing to prevent people coming from one province into another, and so the thing goes around.

THE ACTING CHAIRMAN: We thank you very much for the presentation of your brief and we will give it very serious consideration.

The next will be the Municipality of Northumberland brief and the Municipality of Gloucester brief. The municipality of Gloucester brief will be Exhibit No. 377, and the Municipality of Northumberland, Exhibit No. 378.

Mr. D. King Hazen, K.C. Counsel for the Municipalities, was called.

MR. HAZEN: Mr. Chairman, and Gentlemen, I appear for the Municipality of Northumberland, in the Province of New



Brunswick. Associated with me is Mr. W.W. V. Foster of the New Brunswick Bar. I appear also for the municipality of Gloucester, in the Province of New Brunswick, associated with Mr. Foster.

THE ACTING CHAIRMAN: Speak in reference to Gloucester first because we filed their brief first.

MR. HAZEN: The Municipality of Northumberland and the Municipality of Gloucester appreciate the fact that you have permitted them to file briefs and granted them a hearing.

We have noticed in the local press that the Province of Quebec does not recognize the right of the Commission to investigate its finances, but we assure you that the Municipality of Northumberland and the Municipality of Gloucester are very anxious you investigate their financial position.

THE ACTING CHAIRMAN: We have enough to do, I think, without going into that.

MR. HAZEN: It is not my intention to read these briefs. I do not think any useful purpose would be served by so doing because they contain many statistics and statements of detail that require some study, and a single reading of them would serve no useful purpose. With your permission I desire to present briefly a general outline of these documents, which are much alike in form and make the same submissions.

Both briefs state by way of introduction that the Municipalities recognize that the interests of the Canadian people are the interests of the people of one nation and that the paramount consideration for the Commission is the general interest of all and not the particular interest of the individual provinces within the Dominion, or of the





Municipalities within the provinces. They realize that one-half of the people do not live in the Provinces and the other half in the Dominion with the interests of each unalterably opposed, but that all have a common welfare and it is this common welfare of all the people with which the Commission is concerned. It is in this spirit, the brief states, that they make their submissions.

These Municipalities, as you know, like all Municipalities are creatures of the Legislature. Unlike the Dominion and the Provinces, the Municipalities are not supreme and absolute within their own spheres, but it is their submission, as stated in both briefs, that the functions and obligations of the Municipalities have been extended and have grown to such an extent and have become such a distinct and vital part of the Provincial field that it is necessary in order to obtain a clear view of that field to devote considerable study to the problems of the Municipalities.

If you will permit me, Mr. Chairman, I will refer to Northumberland County first. I might say the County of Northumberland has the largest area of any County in New Brunswick; it comprises 3,020,421 acres, or over 4,700 square miles.

Its population at the last census was 34,124; of the total population, about 25,000 reside in the country and 9,000 in the towns of Newcastle and Chatham.

Almost the entire population is composed of primary producers, who are engaged in lumbering, farming and fishing. Very many of them are engaged to some extent in all three occupations. Their prosperity, to a great extent, is directly dependent on international trade, for the price of their products is largely determined by world markets.



The financial position of the Municipality is not good. The sources of revenue available at the present time fall far short of the requirements necessary for the obligations that are placed upon it.

The result, it is submitted, is inevitable. Unless some other sources of revenue become available, and it will be submitted that other sources of revenue should be available, the result will be either bankruptcy or a discontinuance of certain social services, which will be referred to later.

This, in brief, is the case of the municipality of Northumberland and it is, in brief, also the case of the Municipality of Gloucester.

In the brief that was submitted by the provincial government on page 19, paragraph 4, it says:

"The Province is not approaching this Commission upon the theory that it is bankrupt. There has been no default by it or by a municipality in the payment of liabilities and there is no intention of repudiating any obligation."

The municipalities of Gloucester and Northumberland approach you upon the theory that they are facing bankruptcy or a discontinuance of certain social services unless some other sources of revenue become available. And as is pointed out in both briefs there have been defaults, and large defaults, by both municipalities, in making payments to the provincial hospital and for tuberculosis aid.

The first part of the brief submitted by the municipality of Northumberland commencing at page 4 deals with the financial situation faced by the municipality. I do not propose to read it over but it shows that in 1931 the net bonded debt of the county was about



\$30,000. In 1937 it amounted to \$357,443. An increase of somewhere about 1200 per cent, and to this amount has to be added outstanding debts on January 1st, 1938, of \$180,178.

In the years 1933-34-35 and '36, extraordinary as it may seem, the total deficits exceeded by \$43,000 the total revenues of the County.

The greatest single factor in the increased indebtedness has been the cost of unemployment relief; almost one-half the debt is attributable to unemployment relief, it states, on page 11 of the brief.

Another factor has been the reduced earning power of the people. The people have not been earning enough to pay their taxes.

In 1921 the value of farm lands and buildings in the County according to the Federal census was \$12,250,000. In 1931 this figure had shrunk to \$6,443,000. That is set out on page 7 of the brief.

According to the Federal census of 1921, the gross income from all farms was \$3,010,171., but in 1931 this income had shrunk to \$1,981,000.

Not only had the income from the farms decreased, but the income from the lumbering and the fishing had decreased about in proportion. Although the earning power of the people had decreased, the expenditures of the county had increased.

The net income from the average farm is from four to five hundred dollars, allowing nothing for wages to members of the family, as stated on page 7 of the brief. It is estimated on page 8 of the brief that the average annual income per capita of the population is \$100 or the average annual income for a family of five is \$500.





In the brief submitted by the Province of New Brunswick, at page 24, it states that "The average family income of New Brunswick is \$826.40", which, it says "falls short of providing for the family budget". It would appear that the people of Northumberland and Gloucester county are considerably worse off than most of the residents of this province.

In view of the small earning powers of the people it is not surprising that they have been unable to pay their taxes and that only about 35% of the taxes imposed have been collected. In 1936, according to the table on page 6-A of the brief. This inability to pay taxes reflects the general poverty of the people.

In reference to the matter of taxation, it might not be out of place to refer to the Provincial brief at page 23, paragraph 5, where it says:

"It has reached the position today where it is absolutely impossible to impose any further tax burdens in country places, and the same is true largely with reference to the cities and towns".

It is submitted, as already stated, that an examination of the financial position of the County shows that the sources of revenue available fall far short of the revenue required for the obligations the County has to meet and, it is submitted that the result is inevitable under the present set-up, - either bankruptcy or the discontinuance of certain social services.

So much for part one of the brief which deals with the financial situation of the municipality. There is one other matter however in it to which I might direct the Commission's attention. It is suggested a better taxing act and better methods of assessment would



find more property and income for taxation, especially from those most able to pay, and that the Provincial Government should revise the Rates and Taxes Act and give a proper instrument for this purpose. This suggestion is not developed in the brief, and possibly without further development the suggestion is not of great advantage to the Commission.

Part 2 of both briefs, in effect they follow, as I say, along the same lines, deals with certain obligations and services now performed in whole or in part by both Municipalities.

THE ACTING CHAIRMAN: Part 3?

MR. HAZEN: Well, it is really part 3, but it is part 2. It is really the second part of the brief, but it is marked part 3 in the brief. Certain obligations and services which they submit should either be taken over or assisted to a greater extent by the provincial and Dominion governments.

These services are: First, unemployment relief. The Northumberland brief goes into the cost of unemployment relief quite fully on pages 9, 10, 10a, 11, 11a and 12. From 1931 to June 1936 the average number on relief was from eight to nine thousand persons, a number equivalent to about one-third of the population. In 1934 the cost to the municipality of Northumberland for unemployment relief exceeded the total current revenue of the municipality.

The cost of unemployment relief has been the greatest single factor in relation to the growth of the municipal debt. The municipality has had to meet all of its share of unemployment relief for the years 1933, '34, '35 and '36 by issuing bonds.

In addition to unemployment relief the municipality pays poor relief or alms payments, they are set out on



page 10 of the brief, at an average cost for the last eight years of about \$19,000 per annum.

It is the submission of the Municipality that the matter of unemployment relief has grown to such proportions that it has long since ceased to be a subject of local or private interest and has become one of national concern.

The brief goes on to state that unemployment insurance, should it come into force, will not be of any great assistance to those sections whose chief industries are the primary or basic ones of lumbering, agriculture and fishing, and on page 12 the brief concurs in the view expressed by the union of Nova Scotia municipalities at pages 14 and 15 of the brief it submitted to your Commissioners that some form of assistance will be required by these groups.

Another obligation that has to be met by the municipality is in connection with the treatment of tuberculosis. In New Brunswick the obligation for care of indigent cases of tuberculosis rests, as you have already been told, with the municipalities. In Northumberland county the death rate has increased in the past two years. The municipality pays the hospital a per diem allowance for the care of patients admitted from the county. The province assists the municipality by paying a share of the per diem allowance. The municipality pays \$1.25 a day for each patient and the province pays \$1.00, the balance of the amount. The municipality of Northumberland has not been in a financial position to meet its obligations on these payments and it was indebted on January 1st last to certain hospitals in the amount of \$23,045.73. The municipality, owing to lack of funds, is unwilling to pay the expenses of hospital treatment if it can be avoided and treatment





therefore, is not generally given in the early stages when it is most effective.

The brief submits that the municipality in its present financial circumstances is not the proper taxing authority to shoulder the larger part of the burden of caring for indigent cases of tuberculosis, and that like unemployment relief, the matter has become a

national problem and should be dealt with as such. If the problem cannot be made one of Federal concern, then it is suggested that there be a federal contribution per patient, at least equivalent to the province's contribution, and it is also suggested that a luxury tax be imposed on all intoxicating liquor sold, the proceeds thereof to be applied for assistance to all indigent cases of tuberculosis.

Indigent cases of mentally deficient persons who are confined to the provincial hospital cost the municipality \$5.00 per week. The provincial hospital is operated by the province and is situated near the city of Saint John. On January 1st, 1938, the municipality of Northumberland owed the provincial hospital \$50,398 for care of these patients. This amount the municipality has been unable to pay, although each year it has made payments as shown on page 15 of the brief.

It is submitted that the province should cancel this obligation. In support of this statement your attention is directed to page 43, paragraph 4, of the provincial brief where it says :

"The Municipalities are no longer in a position to contribute in any appreciable amount towards the expense of public health services and the burden in future will fall practically altogether upon the Province or the Dominion."

It is submitted further that a special luxury tax



on intoxicating liquor sold by the New Brunswick Liquor Control Board already suggested for tuberculosis aid is a means by which revenue might also be raised for care of the indigent insane.

The matter of education is discussed in the brief commencing on page 17. At present it is largely an affair of the municipalities and, indeed, of small local districts. It is submitted that the administration of the services should be more largely a provincial matter. In this respect the brief may possibly differ to some extent from the brief submitted by the municipalities of New Brunswick, if I understood the statement that was made here by Mr. Whalon, as I was listening to him. At present the province pays about 20% of the cost of the public schools and the balance is paid by the people of the county. The matter is gone into quite fully in the brief. It is pointed out that the education provided is of an inferior quality. There is no adequate secondary education and there are only 542 out of 7,122 pupils in high schools.

The solution for the unsatisfactory situation, the brief submits, must be found in more provincial support and in more control in administration. The municipality should be a single district for school education and the local district system abandoned. In this way local taxation should be equalized and the province should assume at least 40% of the support, and use it to insure a minimum standard of education throughout the province. The opinion is also expressed that the federal government should set up a minimum standard for all Canada and give sufficient assistance to the provinces to maintain that standard.

Then, other matters: Other forms of welfare matters, are dealt with on page 15.



"It is recognized", it states, "that Old Age pensions and Workmen's Compensation have given relief to many needy people in this country, but there are other kinds of welfare work which are neglected and which need Provincial support and regulation in order to be adequately performed".

The matters then referred to and dealt with to some extent are :

Mothers' allowances and the care of needy and neglected children.

Improvements in jail conditions.

Additional medical, hospital and nursing treatment for the mass of the people.

In the provincial brief at page 5 it says:

"It seems to us to be most desirable that the additional allowances to be made in respect to any of the special matters above referred to, that is, treatment of tuberculosis, public health, mental cases and education, should reach the people of the Province as directly as possible. The people have endured the burdens of providing for these matters. They have been taxed beyond the limit of endurance for the treatment and prevention of tuberculosis, for the maintenance of the insane, for the destitute within the several municipalities, and for the support of the country schools."

How all these additional allowances are to be made without additional taxation, is a problem that we hope this Commission will be able happily to solve.

Part one of the brief deals with the financial situation of the county and shows, as I have stated, that for some years past its income has been insufficient





to meet its obligations. In view of this situation the municipality of Gloucester and the municipality of Northumberland looked about for other means of obtaining additional revenues and they hit upon an additional form of taxation which would bring them in a large sum of money and which under the law they submit they had every right to impose, but which they have been unable to impose.

Over two-thirds of Northumberland County or about 2,307,202 acres consists of forest lands owned by the Crown in the right of the Province. These lands are leased for long terms by the Province to lumber and pulpwood operators; for instance, two companies, the International Paper Company and Frazer Companies, Limited, hold approximately 1,200,000 acres of land in Northumberland County under these long term leases. In adjoining counties a company known as the New Brunswick Railway Company owns about 1,560,000 acres of forest lands and pays forty to forty-five thousand dollars annually in Municipal and school taxes, but from the Crown lands in Northumberland County and the Crown lands in Gloucester County, the Municipalities have received up to the present no taxes or revenue. Two or three years ago the Municipalities of Northumberland and Gloucester decided to tax the interest of the lessees in these Crown lands. It is submitted it had a perfect right to do so. While the Rates and Taxes Act of the province provides that the property of the Crown shall be exempt from taxation, it also provides that any term of years in land is real estate and that real estate is subject to taxation. Cases in the Court are overwhelmingly to the effect that a timber license from the Crown is a property interest which is subject



to taxation. These cases and other authorities are set out in both briefs.

The intention of the Municipality to tax the lessees' or licensees' interest in these Crown lands came to the attention of the Provincial Government and before the tax could be put into effect, and an additional revenue thereby obtained that would have improved to a considerable extent the financial position of the Municipalities, the Province in 1937 passed an amendment to the Rates and Taxes Act that in effect provided that a lessee or licensee of Crown lands could not be taxed.

The Municipalities were thereby deprived of a source of revenue to which they feel they were legally and justly entitled.

No explanation was given by the Government as to why this amendment was made when the Act was introduced in the Legislature.

The matter did not end there, however, for at the session of the Legislature that recently came to an end, another Act was introduced by the Government and passed which repealed the Act of the previous session, but this Act contained a proviso that it would come into force on a day to be fixed by Proclamation. No day has been fixed, and the Municipalities continue to go further into debt. No explanation was given by the Government to the Legislature at the time this bill was introduced. The net result of the two Acts is that the Municipalities of Northumberland and Gloucester are unable to obtain any revenue from this source to which they feel they are justly entitled.

If permission is not granted by the government to obtain a source of revenue from this tax, which they believe to be just, other submissions are made to the



effect that the Municipalities should have the right to impose a tax on Crown lands or that a special subsidy or grant should be paid to the Municipality by the Province each year in lieu of taxation, (the lands have given a revenue to the Province in the last twenty years of approximately \$3,500,000) or that the Municipality should have the right to tax lease holders cutting pulpwood for export in the raw or unmanufactured state. The return to labour from round pulpwood shipped in an unmanufactured state is approximately only 35% of what it would be if manufactured into pulp or paper within the County.

It is submitted further by the Municipalities that the Municipalities should share with the province in a source of revenue that the latter has for years been enjoying. The Province has for many years past received annually the sum of \$119,000. from the Canadian National Railway in lieu of taxation. It is submitted that this amount is really in lieu of Municipal property taxation. The Municipality of Northumberland has approximately 121 miles of C.N.R. railway. The Municipality of Gloucester has approximately 154 miles of railway. If the amount received by the Provincial Government were distributed between the Municipalities on a mileage basis, it would be of assistance to them financially. The Province of Ontario and the Province of Nova Scotia share this grant with the municipalities. The Province of New Brunswick up to the present has not seen fit to do so.

It is further submitted in the brief that was presented by the /municipalities that municipalities should have the right to tax government liquor stores. There is no need for me to go into that matter in detail again.





It is hoped in connection with these taxes on the licencee's interest in Crown lands, in connection with sharing in the \$119,000 grant in lieu of taxes from the Canadian National Railways and in the taxation of government liquor stores, that the Commission may possibly take a wider view, and what the municipalities believe to be a fairer view than the province has, and that the municipalities may thereby in the end obtain further assistance, and another mode of taxation which will increase their revenues.

Now, Mr. Chairman and gentlemen, the brief of Gloucester County, as I said, follows along the same lines as the brief of Northumberland County. The submissions that are made in both briefs are the same, but the chief difference in the two briefs is found in part one, or really it is part two, on page 5 of the Gloucester brief, which deals with the financial position of that county.

Perhaps at this hour it is not necessary for me to go into that in detail, but just perhaps I might refer to one or two things.

It is stated that a review of the earnings of the inhabitants leads to the conclusion that the average annual income per capita based on a present population of 50,000 is about \$77.00 a year. It is estimated that the net income from the farms amounts to \$60.00 per capita per year or \$300 for a family of five.

The fishermen have a short season of from one to four months. Many fishermen do not earn \$30 per month or \$120 for the season. They may work in the woods in the winter but their total yearly income is very small. The rates of pay in the canning factories, when they are operating, are \$1.25 per day for a man and eight cents per hour for a girl.



The total farming population is stated to be 30,639 or 73% of the total population. Only 499 farmers have automobiles. There are only 88 bathrooms in rural houses, 218 telephones, 99 radios and only 91 houses with electricity or gas.

That is a very brief review and may give some picture of the conditions that exist in Gloucester County and with that submission, or with the submissions I have read I will complete my remarks.

Mr. Foster, who is associated with me, with your permission, would like to say a word or two on the matter of education.

THE ACTING CHAIRMAN: Mr. Foster?

MR. W. W. B. FOSTER: Mr. Chairman, I will just take a minute. I know the time is getting along and the submissions are pretty well complete in the brief, and have been covered by Mr. Hazen. Just in connection with the general submissions, I know that you gentlemen have had the argument of fiscal need put forward to you on many occasions at your hearings across the country. And it was argued in relation to the provincial brief and is, I think, a very sound basis of the claim, we are all one family, there undoubtedly is an obligation on the wealthier country to help out those parts which are not so well off.

Mr. Hazen has pointed out that in these two counties, particularly in the county of Gloucester more than it has been in Northumberland, there is a great deal of poverty, and I think therefore there is certainly an obligation on the wealthier sections to do what they can for these poorer districts.

In that respect, in relation to education, there is just one matter referred to in the brief that I would like to refer you gentlemen to. It is on page 21 of the Gloucester brief, along the lines that the director of



education,, Dr.Peacock was referring to the other day.  
You will see on page 21, about the middle of the page:

"Of the 9114 pupils in schools in Decombor, 1936",-  
this is in the county of Gloucester, there were  
in Grade 1, 3142; only 305 in Grado VIII; only  
139 in Graxo IX; 63 in Grade X and only 49 in  
Grade XI."

The figures in relation to the number of pupils  
and the grades in the county of Gloucester show that  
60% of the pupils are in grades 1, 2 and 3, which  
means that if you were born in that particular part of  
the province you would not have a fifty-fifty chance of  
getting to grade four. And we believe there is, or  
the county submits that there is much to be done in  
the field of education. Our submission, as Mr.Hazon  
says, is set forth at the bottom of page 21, and the  
top of page 22. We would even go so far as to submit  
that there should be federal equalization of funds wheroby  
provinces which were not able to provide as much for  
education in proportion to the population, as other  
provinces are, should be entitled to draw from that  
equalization fund.

I noticed the other day Mr.Stewart asked the  
question when Dr.Peacock was speaking, he asked the  
question,I think, of the director of education, who had  
said that he thought there should be a basic equality  
of opportunity provided through educational facilities,  
and I think the agreement was reached that it would be  
very difficult to reach as a complete goal, to reach  
the complete goal, but the municipality submits that  
there should be a certain minimum standard which should  
be approved throughout the whole country and grants  
given from the provincial government and also from the  
federal equalization fund, if necessary.





Now, I could go further into the question of education, but, as I have said, it is fully set forth in the brief and I will leave it at that. There was one other question raised in the discussion in relation to the provincial brief to which I would just like to make a reference. The question is in relation to these municipalities and it was raised by the Commission Counsel, Mr. Stewart. This question was raised on two occasions, one was when we were considering page 11 of the provincial brief and the principle of fiscal need. Mr. Stewart said the province endeavoured to equalize the percentages as between the different sections of the different counties in the provinces. This same idea was put forward by the Commission Counsel when we were at page 37 of the brief, and that was in relation to education. I think Mr. Stewart put forward the question, is not there greater disparity between the districts in New Brunswick than between New Brunswick and the other provinces? There is, indeed, a considerable element of truth in the idea that he was putting forward, but in all provinces there are undoubtedly great disparities and differences between the opportunities both educational and otherwise, and the privileges by way of social services that go to the people in the various districts of those provinces. I point this out because I think it is important in relation to the thought which Mr. Stewart raised and I do think, in our province, undoubtedly, one reason for that is the small basis of taxation for many of the social services.

For instance, the small parish unit pays for the support of its own poor and, as Mr. Hazen has pointed out, also pays for hospitalization and doctors' services for



all paupers who cannot afford to pay for those services themselves. There is also imposed on the municipalities, on most municipalities and the parish unit---this is the unit upon which the tax is imposed for the care of insane persons from that parish and it is the same with tuberculosis and education. You have the same thing in a large majority of the cases as Mr. Hazen has pointed out, in the small school districts. The result is that if the district is poor and in need of the various social services to which I have referred, it is much more difficult to raise that poor section, that small section or parish unit, up to the proper level, especially where the incidence of the tax actually rests upon the unit. If there were a wider base of taxation, if the whole county contributed towards the support of the insane, the tubercular, and towards the support of poor persons throughout the county, it would tend to raise these poorer parishes and these poorer sections of the county up. As Mr. Hazen has also stated, we submit, and the municipalities do, that there should be a revision of the Rates and Taxes Act. The thought in mind there being, that if you had a county system of evaluation, only for the parish assessment, that it would work out much better in the long run. The tendency at the present time being for the parish assessors to keep the assessment as low as possible in order that their particular parishes may receive contributions from other sources. It is in this way that the picture gets distorted.

I will not take up any more of your time and, as Mr. Hazen has said, we appreciate this opportunity of presenting our brief and our views to this Commission.



THE ACTING CHAIRMAN: I have only one question to put to you. What do you mean by the reference on page 18 of the brief, in connection with mothers' allowances, you say that the government proclaimed this legislation on the eve of an election? Does that mean something?

MR. FOSTER: It is a statement of fact, and we will leave it at that.

THE ACTING CHAIRMAN: These briefs will now be marked as exhibits. The Brief of the Municipality of Gloucester will be exhibit number 377 and the brief of the Municipality of Northumberland will be exhibit number 378.

EXHIBIT NO. 377: Brief of the Municipality of Gloucester.

EXHIBIT NO. 378: Brief of the Municipality of Northumberland.

THE ACTING CHAIRMAN: I believe the next person from whom we will hear will be Mr. O. V. B. Miller.





Mr. O.V.B. Miller was called.

MR. MILLER: Mr. Chairman, and Members of the Commission, it is unfortunate that due to a serious illness the President of the Teachers' Association is unable to be here to-day. I have been asked to present this brief of the New Brunswick Teachers' Association in my capacity of Past President.

"The Teachers of this Province are alive to the need for improved instruction in our elementary and secondary schools. They, more than any others, realize the handicaps under which they work. They also realize that our people desire a more effective education, but doubt the ability to bear any added burden. The evidence of the faith that our people have in education is shown by the fact that men and women who received their school and university training in this Province are to be found in responsible positions in every Province of the Dominion, and through all sections of the United States. The deplorable fact is that their training and intelligence is lost to their native Province."

Now, the subject of education has been rather fully dealt with in all the briefs and I feel that if I were to read this brief in its entirety it would be merely duplication. I shall take a few sections of it, and I may speak on them.

"The British North America Act specifically states that education shall be the concern of the Provincial Governments. There seems to be no inclination on the part of the Provinces to turn over this responsibility to the Federal Government. Precedent, is not wanting, however, for the granting of Federal aid to the Provinces for educational purposes, without in any way dictating to the Provinces. Grants



"have been made for specific purposes, and it has rested with the Provinces as to whether or not they would take advantage of these grants."

Then the third paragraph on page 3:

"In each of these instances the Federal assistance has been, or is, for the purpose of providing for some recognized deficiency in the Provincial educational program. The justification of and argument for Federal assistance is that such deficiencies are detrimental to national well-being. This is the only justification, and the Federal responsibility in this regard is just as great to-day as in 1913 or 1919. In fact, conditions during the last few years have served to emphasize the deficiencies. This is indicated by the fact that a large number of unemployed youth have not the training required to find a place in the industrial and commercial life of the nation. Hence the Youth Training Movement."

I have to draw your attention to an error at the bottom of page 3 where it says: "Provision is also made for the establishment of Consolidated Schools, the Government bearing part of the building costs and one-half the cost of transportation of pupils to such schools - - ". The section "Part of the building costs" should be struck out. The Government does not provide part of the building costs.

"Under the Vocational Education Act, from 60% to 75% of vocational teachers' salaries is paid by the Government to the local boards. Provision is made for library grants and for the medical inspection of schools.

Although, apparently, fairly liberal provision is made for education in this Province, we find the following conditions:



- "1. New Brunswick has a larger proportion of illiterate adults than any other Province in Canada.
2. Teachers are poorly paid, (see attached table) and therefore are not encouraged to improve their scholarship and professional skill.
3. All children must be vaccinated before entering school. The Medical Officer makes one inspection per year, but there is no provision for follow-up work, except in those cities and towns that provide school nurses and free clinics. Hence, the inspection is practically valueless except in the prevention of the spread of infectious and contagious diseases.
4. Libraries are very inadequate or utterly lacking in many schools, urban as well as rural."

I shall leave the other items for your consideration at your leisure. In the matter of rural education, page 5, paragraph 2:

"The area described includes about 230 square miles, which may be considered as a fairly typical section of our Province. The people for the most part are engaged in farming, fishing, and, to a small extent, lumbering. In this area are a few small lobster factories, two canneries, a shock mill, two or three portable lumber mills, and the usual supply of small retail establishments.

In this territory there are thirty-one separate school units, or districts. With the exception of four, these districts maintain a one-room, one-teacher school. In only one district is secondary education to college level provided. The County High School is free to the youth of these communities, but





"attendance there would necessitate boarding in the City in which the school is located. The education given in these rural schools is reading, writing, arithmetic and the learning of facts as set forth in the prescribed texts of geography, history, science, etc. A very few of these schools maintain small libraries. No hand-work is given; little in their education connects the school life of the children with the problems that they will be called upon later to solve in their occupations as fishermen, farmers, home-makers, or as parents and responsible citizens in a democracy. The objective is literacy provided at minimum cost. Those who attend secondary schools do so that they may improve their station in life, which means usually entering a profession, after college or normal training.

Of the 1081 boys and girls between the ages of twelve and nineteen, 475 are in school. Of the total of 1290 pupils attending school, 236 are in grade I, 150 in grade II, 164 in grade V, 112 in Grade VIII, 50 in the first year in high school, 26 in the second year and 12 in the senior year.

The total assessment for school purposes is \$1,375,000. The money voted for school purposes is slightly less than \$20,000, annually. This is exclusive of county and provincial grants. In one district, maintaining a one-teacher school, there is a surplus of \$460, while in another district, maintaining a two-department school and requiring \$720 from local taxes, \$985 is owing on teachers' salaries. One district has assessed for \$150 to maintain a school for one year."



I think, Gentlemen, this last paragraph will indicate to you that there is radical need for an adjustment in the taxing situation and in administration of the schools and the revision of the bounds of district. I shall pass over the subject of urban education, which is stated as being fairly satisfactory. On page 6, paragraph 7, "Educational facilities may be improved", I would like to quote a statement by Dr. Coady, of Saint Francis Xavier University, who has said: "There is no use talking about culture until you have put a shirt on a man's back and food in his stomach" so one requisite of education for citizenship is to teach the youth how to be self-supporting if he is to be self-respecting. He thus becomes a national asset rather than a possible liability.

In the matter of Federal aid, in the second paragraph:

"Thus we find an intermingling of factors, so that it is impossible to tell which is cause and which is effect. Teachers' salaries are disgracefully low, and hence there is not the incentive to acquire the training that will make their services worth more. The tax burden is such that a more costly educational programme is considered impossible; but if there were a more costly programme, wisely administered, the ratepayers would probably become more able to bear the cost.

Federal aid could break the deadlock by assistance in one or more of the following ways:

1. A renewal of grants as under the Technical Education Act of 1919. This will enable certain centres of population, such as the City of Moncton, that were not in a position to take advantage of the grants previously, to instal



"a broad programme of vocational education. It will also be an incentive to the establishment of central rural high schools along the line that the Department of Education now has under consideration.

2. The payment of an annual sum to be used as an equalization fund. This should be of material assistance in the establishment of larger administrative units, which is essential for the efficient administration of an educational programme and in order to equalize educational opportunities.
3. The endowment of a Department of Research in the Provincial University. The function of this Department would be to work in co-operation with the provincial Departments of Agriculture, Lands and Mines, and Education, and the Federal Department of Fisheries, in making an exhaustive study of the agricultural, mineral, forestry, and fishery resources of this province, with a view to more efficient development of these resources, and proper methods of conservation. It would also be the task of this Department to explore the possibility of new developments, such as the production of antimony, manganese, and copper, and to interest reliable mining concerns in such development, should it prove feasible. The Department should make a study of markets, and marketing, and of the possibilities of processing more of the raw materials produced in this province. The information obtained should be given to the public, and persistent attempts should be made to interest capital necessary for new enterprises."





This is respectfully submitted on behalf of the New Brunswick Teachers' Association; signed W.C. Haines, President, and H.C. Ricker, Secretary-Treasurer. The statistical table mentioned previously, dealing with the teachers' salaries, there are a few of these figures which I would draw to your attention. Of the teachers receiving less than \$300. we find in rural schools, of one room, in 1936, 78 such teachers, and 83 in 1937.

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From \$400 to \$500 we find that in 1936 there were 105 and in 1937 102. Under \$500, between \$400 and \$500 we find a total of 771. That is rural schools with more than one-room in 1927, 61. 710 in the one room schools. And under \$600 for 1937, 83, in the more than one-room school. And in the one-room school 461. So that we have a total of over 1300 teachers in the province of New Brunswick who receive salaries of less than \$600 per annum.

I think that anyone would admit that such a condition is not conducive to energy or effort for improvement of conditions, when so many of our teachers must start out at this very low salary. Many of the better type of students will not look forward to the teaching profession as one that is worthy of consideration.

I thank you for the opportunity of presenting this brief on behalf of the Teachers' Association and I would be glad to attempt to answer any question that might be asked. I also have Inspector M.G. Fox who will be happy to talk on any matter relative to the subject.

THE ACTING CHAIRMAN: I do not think there are any questions. We have had briefs on the same subject matter in other provinces and also one in Ottawa which covered the situation from a national point of view. What is important is to get details as to the particular situation in New Brunswick and these are contained in your brief. Another important question, of course, will be for us to solve the question of jurisdiction in these matters in the light of the terms of reference contained in the order-in-council appointing the Commission. The brief will be filed as exhibit 379.

EXHIBIT NO. 379 -      Brief of New Brunswick  
Teachers' Association.

THE ACTING CHAIRMAN: Mr. Fowler, I understand you have a statement to make in connection with another matter?



MR.FOWLER: Yes, Mr.Chairman, in connection with overlapping services. The only one we have not had so far, and one that we usually have, is evidence of a company law and administration. The Deputy Attorney-General, Mr. Dickson, is in charge of that matter here. He was present a moment ago but he is not here at the moment. He told me he has read over Dr.Coleman's statement at Ottawa and it has his full approval.

THE ACTING CHAIRMAN: So there is no document to be filed?

MR.FOWLER: No, Mr.Chairman.

THE ACTING CHAIRMAN: Have you anything else, Mr. Jones?

HON.MR.JONES: I have nothing, Mr.Chairman.

THE ACTING CHAIRMAN: Then we will declare the sittings here closed, to resume in Ottawa. We thank you again, Mr.Jones, and tender to the Prime Minister our regrets he has been sick, but we hope he will improve very quickly.

HON. MR.JONES: Thank you on his behalf.

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--- (The Commission adjourned at 1:30 P.M. May 23rd, to meet in Ottawa.)













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